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ARTICLE 7-14

INDUSTRIAL HEMP

Chapter

7-14-01

General Administration

7-14-02

Industrial Hemp Production

CHAPTER 7-14-01

INDUSTRIAL HEMP

Section

7-14-01-01

Industrial Hemp Production

7-14-01-01. Industrial hemp production.

1. History. The legislative assembly defined industrial hemp as an oilseed and legalized the production in the state of North Dakota under North Dakota Century Code sections 4-41-01 and 4-41-02.
2. The agriculture commissioner will license applicants to import and produce industrial hemp and will collect all license fees.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

CHAPTER 7-14-02
INDUSTRIAL HEMP PRODUCTION

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7-14-02-01. Definitions. For purposes of this chapter:

1. "Approved cultivar" means any variety of industrial hemp designated by the commissioner in a published list and may be amended from time to time.
2. "CBL" means cannabinoid, a nonpsychotropic compound.
3. "Certify" means to declare the number of acres of industrial hemp planted either to the local United States department of agriculture farm service agency or by a signed notarized form developed by the commissioner.
4. "Competent laboratory" means a laboratory that is determined by the commissioner as a qualified laboratory with qualified staff to appropriately test for THC and CBL levels.
5. "Criminal conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, or a judgment of conviction even though the court may have suspended execution of a sentence in accordance with subsection 3 of North Dakota Century Code section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of North Dakota Century Code section 12.1-32-02, or an equivalent statute.
6. "Industrial hemp" means the plant Cannabis sativa L. with no more than three-tenths of one percent THC in a mature seed or in a growing plant with a THC level above three-tenths of one percent if the CBL to THC ratio is not less than two to one.
7. "Seed" means any part of an industrial hemp plant that is represented, sold, or used to grow a plant.

8. "THC" means tetrahydrocannabinol ((6aR, 10aR)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol), a psychotropic compound.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-02. Licensing.

1. Any individual or entity desiring to obtain a state license to grow industrial hemp for commercial purposes shall comply with the following:
 - a. A completed license application must be submitted to the agriculture commissioner on such forms as supplied by the commissioner or otherwise approved by the commissioner and the proper fee prescribed by the statute by January first of each production year.
 - b. A minimum of ten acres must be planted for each license granted except for North Dakota state university for research purposes.
 - c. The applicant must list all individuals who will be involved in any manner in handling or producing industrial hemp.
 - d. The applicant, including each individual involved in the handling or production of industrial hemp, must submit written consent granting a state and national criminal history check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, and a statement indicating whether the applicant or individual has ever been convicted of a crime. The applicant must pay all costs associated with conducting each criminal history background check.
 - e. The applicant must provide to the commissioner field locations using geopositioning capability instrumentation along with an official aerial United States department of agriculture farm service agency map or any other method approved by the commissioner.
2. Licenses expire on December thirty-first of each year.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-03. License renewal.

1. Licensees wishing to renew their licenses must submit to the commissioner a completed license renewal application on such forms as prescribed by the commissioner by January first of each year following the initial year of production.
2. For all crop not marketed during the licensed year, the licensee must apply for and receive a new license the following year.
3. A licensee shall submit the fee prescribed by statute with the renewal application for a license.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-04. Producing and handling requirements.

1.
 - a. The licensee shall ensure that all equipment that is used to sow or harvest the hemp is thoroughly cleaned after each use in order to avoid the inadvertent dissemination of industrial hemp.
 - b. All industrial hemp seed must be covered during transport to avoid the inadvertent dissemination of industrial hemp.
 - c. All volunteer industrial hemp plants not located in a field licensed to produce must be destroyed before reaching the seed-producing stage.
 - d. All nonexempt plant material must be exported or sold to a United States drug enforcement administration registered processor.
2. All licenses granted by the commissioner must be submitted to the United States drug enforcement administration each year for approval.
3. A license issued by the commissioner shall not be effective until the licensee receives a registration from the United States drug enforcement administration to import, produce, or process industrial hemp.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-05. Reporting requirements.

1. The following information must be supplied to the commissioner by July first of each year.

- a. The licensee shall certify to the commissioner the final planted acreages of industrial hemp on a form prescribed by the commissioner.
 - b. The licensee shall file with the commissioner documentation indicating that the seed planted was of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol. The documentation must include laboratory test results from a competent laboratory certifying that the seed has no more than three-tenths of one percent tetrahydrocannabinol.
 - c. The licensee shall report to the commissioner the name, address, and telephone number of any person from whom all seed used in the production of industrial hemp was purchased.
2. The licensee must report to the commissioner the name, address, and telephone number of any purchaser of industrial hemp seed and nonexempt plant parts at the time of the sale.
 3. The holder of a license shall notify the commissioner of the following changes within fifteen days after a change:
 - a. To the name, address, or telephone number of the licenseeholder;
or
 - b. In the ownership of the land used to cultivate industrial hemp.
 4. The licensee must notify the commissioner a minimum of two weeks prior to the intended harvest date to allow the commissioner to take and test samples. The licensee must notify the commissioner of the intended location of all storage facilities using geopositioning capability instrumentation.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-06. North Dakota state university research center and agricultural experiment station requirements.

1. The North Dakota state university research center and the agricultural experiment stations must comply with all licensing requirements except for the criminal history background check.
2. The North Dakota state university research center and the agricultural experiment stations must report all storage facilities containing

industrial hemp seed using geopositioning capability instrumentation to the commissioner by December thirty-first of each year.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-07. Enforcement.

1. The licensees shall allow enforcement officials to enter industrial hemp fields at any time to monitor and test the hemp crop. Industrial hemp fields must be readily accessible for monitoring and testing purposes and must have open access at a minimum of one side of the field.
2. The licensee must receive approval to harvest from the commissioner prior to harvest.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-08. Noncompliance.

1. A licensee who does not comply with all the requirements of this chapter and North Dakota Century Code chapter 4-41 will forfeit the right to grow industrial hemp for a period of up to five years.
2. The commissioner has the discretion to destroy all crop, grain, oil, or fiber that was produced in a manner inconsistent with the requirements of this chapter.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-09. Prohibitions.

1. A person may not advertise in any fashion that would indicate that industrial hemp, its derivatives, or any product made from those derivatives is psychoactive.
2. A person may not possess, transport, distribute, grow, or deal in any plant parts of industrial hemp without first having obtained a license according to section 7-14-02-02.

3. A person may not plant bin-run or noncertified seed.

History: Effective January 1, 2007.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

TITLE 13
DEPARTMENT OF FINANCIAL INSTITUTIONS

CHAPTER 13-03-02

13-03-02-04. Limitation on amount loaned to one member. The maximum amount that any credit union organized and operating under the laws of North Dakota, except the ~~North Dakota~~ any corporate or corporate central credit union, ~~Bismarck, North Dakota~~, which is specifically exempted from the provisions of this section, shall loan on real estate security to any one member shall not exceed the amounts based on the total assets of the credit union making the loan that are provided in subsection 7 of North Dakota Century Code section 6-06-12.

History: Amended effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, ~~6-06-12(7)~~ 6-06-12(1)(g)

CHAPTER 13-03-03

13-03-03-01. Individual investment ~~–Limitation; total limitation - Total investment –Limitation limitation.~~ No credit union organized and operating under the laws of North Dakota, except the ~~North Dakota~~ any corporate or corporate central credit union, Bismarek, North Dakota, which is specifically exempted from the provisions of this section, shall invest more than ten percent of the total paid in shares and deposits of the credit union in first lien, public utility, industrial, corporation, or association bonds, or notes, ~~or other evidences of debt~~ issued by corporations located in the United States of America.

History: Amended effective December 1, 1978; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-03-02. Applicability. Section 13-03-03-01 shall not apply to a credit union's direct loans to members. A credit union's participation in a loan originating with another lender shall be considered ~~an investment~~ a loan for purposes of this chapter. Participation loans are subject to the provisions of chapter 13-03-20.

History: Effective August 1, 1980; amended effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-03-03. Investment in other evidences of debt. A state-chartered credit union may invest in other evidences of debt, issued by corporations located in the United States of America, upon approval from the state credit union board.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-04

13-03-04-01. Maximum investment in fixed assets to be determined by state credit union board. No credit union organized and operating under the laws of North Dakota, except the ~~North Dakota~~ any corporate or corporate central credit union, ~~Bismarek, North Dakota,~~ which is specifically exempted from the provisions of this section, shall invest more than six percent of assets in a credit union office building, including the lot, piece, or parcel of land on which the same is located, furniture, fixtures, and equipment, without first applying for and obtaining approval from the state credit union board.

History: Amended effective June 1, 1984; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-02. Procedure for investment in building. Any state-chartered credit union planning to construct or purchase a building shall follow and comply with the following procedure:

1. The board of directors shall adopt a resolution to invest in a building, and stating the maximum funds to be invested in a lot and building.
2. If the resolution is adopted by a majority of the board of directors, ~~it shall then be presented to a regular or special meeting of the members and if the resolution involves an investment, including the depreciated value of the building, and all furniture, fixtures, and equipment carried as an asset of the credit union, of more than six percent of assets of the credit union, the board of directors shall then make application to the North Dakota state credit union board for permission to invest in a building. If the investment totals six percent or less of the assets, the board of directors and management will proceed with the project as approved by the board of directors.~~
3. ~~If the resolution is approved by seventy-five percent of the members present, and if the resolution involves an investment, including the depreciated value of the building, and all furniture, fixtures, and equipment carried as an asset of the credit union, of more than six percent of assets of the credit union, the board of directors may then make application to the North Dakota state credit union board for permission to invest in a building. If the investment totals six percent or less of the assets, the board of directors and management will proceed with the project as approved by the members.~~

History: Amended effective June 1, 1984; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-06

13-03-06-01. Establishment of special reserve fund Definition.

1. ~~All credit unions operating under a charter issued by the state of North Dakota shall be required to establish a special reserve fund whenever the reserve fund required by North Dakota Century Code section 6-06-21 is inadequate for past due loans. Adequacy for past due loans shall be computed in accordance with the formula in section 13-03-06-02. When the amounts calculated under section 13-03-06-02 exceed those required pursuant to North Dakota Century Code section 6-06-21, the reserves required by North Dakota Century Code section 6-06-21 shall be considered inadequate, and the excess shall be set aside in a special reserve fund.~~
2. ~~All reserve funds shall be established and adjusted at the end of each quarter of the fiscal year. If the amount of special reserve carried forward from the previous quarter exceeds the amount of special reserve required for the current quarter, the excess may be returned to undivided profits. The commissioner of financial institutions may require a credit union to adjust its reserves more often, or at different times, than quarterly. The commissioner may also require a credit union to put aside additional reserves under the formula provided in section 13-03-06-03.~~
3. ~~Upon application by a credit union to the state credit union board, and upon the showing of extraordinary hardship, the state credit union board may alter the reserve requirements as set forth in this chapter when, in its opinion, such an alteration is necessary or desirable. "Net worth ratio" means the sum of the undivided earnings, the regular reserve, and other reserves, excluding the allowance for loan and lease loss account and excluding the investment valuation reserve account, divided by the total assets of the credit union.~~

History: Amended effective January 1, 1981; August 1, 1984; June 1, 2002; January 1, 2007.

General Authority: NDCC 6-01-04, 6-06-21.1

Law Implemented: NDCC 6-06-21.1

13-03-06-02. Calculation Maintaining an allowance for loan and lease loss account.

1. **Installment notes:**
 - a. ~~Current but less than sixty days -- no reserve required.~~
 - b. ~~Sixty days but less than six months -- ten percent of total balance due.~~

- e. ~~Six months but less than twelve months - fifty percent of total balance due.~~
- d. ~~Twelve months and over - one hundred percent of total balance due.~~ All credit unions operating under a charter issued by the state of North Dakota shall be required to maintain an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union administration. When the amounts calculated under section 13-03-06-02 exceed those required pursuant to North Dakota Century Code section 6-06-21, the allowance for loan and lease loss account will be considered inadequate, and the excess will be transferred to the allowance for loan and lease loss account through the provision for loan and lease loss expense account within thirty days as directed by the commissioner.

2. **Single maturity notes:**

- a. ~~Current but less than thirty days - no reserve required.~~
- b. ~~Thirty days but less than six months - ten percent of total balance due.~~
- e. ~~Six months but less than twelve months - fifty percent of total balance due.~~
- d. ~~Twelve months - one hundred percent of total balance due.~~ Upon application by a credit union to the state credit union board, and upon the showing of extraordinary hardship, the state credit union board may alter the allowance for loan and lease loss requirements as set forth in this chapter when in its opinion, such an alteration is necessary or desirable.

History: Amended effective June 1, 1979; January 1, 1981; January 1, 2007.

General Authority: NDCC 6-01-04, 6-06-21.1

Law Implemented: NDCC 6-06-21.1

13-03-06-03. ~~Additional special reserves for classified loans~~
Calculation. ~~The commissioner of financial institutions may require a credit union to put aside additional reserves on business and agricultural loans according to the following classification formula~~ The adequacy of the allowance for loan and lease loss account as required under North Dakota Century Code section 6-06-21 will be based upon an individual loan classification at each examination of the credit union performed by the commissioner under authority granted the commissioner under North Dakota Century Code section 6-06-08. The commissioner of banking and financial institutions may require a credit union to put aside additional reserves on loans according to the following classification formula:

1. ~~Substandard loans - no reserve required up to ten percent of the loan balance.~~
2. ~~Doubtful loans - fifty percent of total balance due the net exposure to loss after collateral values are considered.~~
3. ~~Loss loans - one hundred percent of total balance due the net exposure to loss after collateral values are considered.~~

History: Effective January 1, 1981; amended effective June 1, 2002; January 1, 2007.

General Authority: NDCC 6-01-04, 6-06-21.1

Law Implemented: NDCC 6-06-21.1

13-03-06-04. Allowable investment for funds Prompt corrective action.

1. ~~Funds established pursuant to this chapter shall be invested in certificates of deposit in insured banks, the Bank of North Dakota, savings and loan associations, or the North Dakota central credit union; government securities; or the international credit union services government securities program.~~
2. ~~A credit union required to keep reserves imposed by the federal reserve system's universal reserve requirements, and required to keep a special reserve as provided in this chapter, may satisfy its special reserve requirement in the same manner as it may satisfy its federal reserve system reserve requirement, that being vault cash, an authorized passthrough account with a correspondent, or an account with a federal reserve bank. When the credit union's net worth ratio falls below seven percent after allowing for full and fair disclosure in the allowance for loan and lease loss account, the credit union is required to meet the prompt corrective action requirements under North Dakota Century Code section 6-06-08.4 and part 702 of the national credit union administration's rules and regulations. Any required reserves to be made under prompt corrective action will be made to the regular reserve account.~~

History: Effective January 1, 1981; amended effective May 1, 1981; January 1, 2007.

General Authority: NDCC 6-01-04, 6-06-21.1

Law Implemented: NDCC 6-06-21.1

CHAPTER 13-03-07
LIQUIDITY RESERVES FOR REMOTE ACCESS ACCOUNTS

[Repealed effective January 1, 2007]

CHAPTER 13-03-13

~~13-03-13-01. Authority to invest in investment securities or instruments~~ **Community development revolving loan program.** ~~State credit unions may invest in investment securities or instruments offered by companies registered under the Investment Companies Act of 1940 in accordance with investment authorizations issued for federal credit unions by the national credit union administration, subject to the same limitations or restrictions, if any. Credit unions may participate in the national credit union administration's community development revolving loan program for credit unions subject to the rules established under part 705 of the national credit union administration's rules and regulations.~~

~~History:~~ Effective March 1, 1988; amended effective December 1, 1992; January 1, 2007.

~~General Authority:~~ NDCC 6-01-04

~~Law Implemented:~~ NDCC 6-06-06

~~13-03-13-02. Investments restricted~~ **Designation of low-income status - Receipt of secondary capital accounts by low-income designated credit unions.** ~~Total investments authorized under section 13-03-13-01 are limited to an amount not more than ten percent of assets. Adjustments must be made on the last day of each quarter to the lower of cost or market. Notwithstanding federal regulations, those mutual funds offering "puts" and "calls" are eligible for purchase by state credit unions. A credit union may be designated as a low-income credit union and may offer secondary capital accounts subject to the rules established by the national credit union administration under part 701.34 of the national credit union administration's rules and regulations.~~

~~History:~~ Effective March 1, 1988; amended effective December 1, 1992; January 1, 2007.

~~General Authority:~~ NDCC 6-01-04

~~Law Implemented:~~ NDCC 6-06-06

~~13-03-13-03. Effective date of authority to invest.~~ ~~The authority for state credit unions to invest in investment securities or instruments shall be the date the investments are effective for federal credit unions unless the board shall otherwise direct within ninety days of the board receiving notification of proposed adjustments. Repealed effective January 1, 2007.~~

~~History:~~ Effective March 1, 1988; amended effective December 1, 1992.

~~General Authority:~~ NDCC 6-01-04

~~Law Implemented:~~ NDCC 6-06-06

~~13-03-13-04. Authority to invest in credit union service organizations.~~ ~~State credit unions may invest in credit union service organizations subject to the~~

limitation provided for in this chapter and subject to approval by order of the board.
Repealed effective January 1, 2007.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-05. Definitions. ~~Unless the context otherwise requires, terms in this chapter have the following meanings:~~ Repealed effective January 1, 2007.

1. ~~"Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.~~
2. ~~"Credit union service organization" means financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.~~
3. ~~"Equity" means the total of regular reserves, investment valuation reserve, other reserves, and undivided earnings as reported on the most recent yearend call report.~~
4. ~~"Immediate family member" means a spouse or other family member living in the same household.~~
5. ~~"Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee, chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager) and the chief financial officer (comptroller).~~

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-06. Application. ~~An application to establish a credit union service organization must be submitted to the board in writing and must contain the following:~~ Repealed effective January 1, 2007.

1. ~~A full explanation and complete documentation of the proposed credit union service organization.~~
2. ~~A listing of proposed management and their qualifications.~~
3. ~~A proposed business plan with financial projections for at least three years.~~
4. ~~Any additional information as requested by the board or commissioner.~~

~~Once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration. The board shall issue an order to either approve or disapprove the application. Upon notice of disapproval, the applicant has fifteen days to petition for a hearing before the board.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-13-07. Hearing.** A public hearing by the board may be required on applications to invest in credit union service organizations whenever the board or commissioner determines that it is in the public interest to hold such a hearing or whenever a credit union or party requests an opportunity to be heard is granted. Notice of hearing on an application will be issued at least thirty days prior to the hearing on the application. Repealed effective January 1, 2007.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-13-08. Permissible services and activities.** A state credit union may invest upon approval by order of the board in those credit union service organizations that provide one or more of the following services and activities: Repealed effective January 1, 2007.~~

- ~~1. The credit union service organization can conduct the following services and activities without approval of the board, but subject to applicable state licensing requirements: credit card and debit card services; check cashing and wire transfers; internal audits for credit unions; automated teller machine services; electronic funds transfer services; accounting services; data processing; shared credit union branch (service center) operations; sale of repossessed collateral; management, development, sale or lease of fixed assets; sale, lease, or servicing of computer hardware or software; management and personnel training and support; payment item processing; locator services; marketing services; research services; record retention and storage; microfilm and microfiche services; alarm monitoring and other security services; debt collection services; credit analysis; coin and currency services; provision of forms and supplies; income tax preparation; and provision of vehicle warranty programs.~~
- ~~2. The credit union service organization may not initiate the following services and activities after December 1, 1992, without approval of the board, and subject to applicable state licensing requirements: consumer mortgage loan origination; loan processing, servicing, and sales; financial planning and counseling; retirement counseling; investment counseling; securities brokerage services; estate planning; acting as administrator for prepaid legal service plans, developing, and administering individual retirement account, Keogh, deferred~~

~~compensation and other personnel benefit plans, trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; real estate brokerage services; travel agency services; agency for sale of insurance; and personal property leasing.~~

- ~~3. The board may approve any service or activity which is not authorized in subsection 1 or 2, subject to approval by the national credit union administration.~~
- ~~4. The board in granting approval for a service or activity shall consider all relevant factors including:
 - ~~a. Whether the credit union service organization management or staff possesses adequate expertise or skills to perform the service or activity; and~~
 - ~~b. Whether the proposed activity or service is reasonably expected to be profitable.~~~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

13-03-13-09. Limitations on investments in credit union service organizations. ~~The following limitations apply to state credit unions for investments in credit union service organizations: Repealed effective January 1, 2007.~~

- ~~1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations in an amount exceeding ten percent of its equity. The board may waive this limitation for a credit union investment in a credit union service organization existing before December 1, 1992.~~
- ~~2. Credit unions may not make loans to a credit union service organization in which it is affiliated in an amount exceeding ten percent of its equity. North Dakota central credit union may make a loan to its credit union service corporation, subject to approval of the board.~~
- ~~3. Any credit union currently holding an investment in a credit union service organization shall apply to the board for approval to engage in any additional service or activity.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

13-03-13-10. Conflict of interest. ~~Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission,~~

~~investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the state credit union for the services provided by the individual. Repealed effective January 1, 2007.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-13-11. Examinations.** A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans. Repealed effective January 1, 2007.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08~~

CHAPTER 13-03-14

13-03-14-01. Definitions.

1. "Branch", for the purpose of this chapter, means any credit union facility which is established apart from the principal office where credit union business is transacted, not including remote electronic facilities, such as automated teller facilities, point-of-sale terminals, etc.
2. "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association.
3. "Geographical boundaries" means ~~the outer perimeters of the area which may be served as expressed in the field of membership authority and may be expressed by city, county, township, or highway boundaries, or as a vicinity or trade area or trade territory which are defined as a radius of fifty miles [80.47 kilometers], or a specifically stated radius from the principal office of the credit union~~ a geographical area that does not extend beyond a seventy-five-mile [120.70-kilometer] radius of the home office.
4. ~~"Open charter" means a credit union charter issued to serve groups within a well-defined rural or urban district.~~
5. ~~"Principal Home office" means the location or place of business, or both, in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the secretary of state~~ designated by the credit union as its home office which must be located in the credit union field of membership. Such a designation of a home office shall not expand a credit union's field of membership.
5. "Open charter" means a credit union charter issued to serve groups within a geographical boundary.

History: Effective April 1, 1988; amended effective September 1, 1988; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-02. Field of membership expansion.

1. A North Dakota state-chartered credit union may expand its field of membership subject to approval of the state credit union board and in accordance with the provisions of this chapter and North Dakota Century Code chapter 6-06.
2. The state credit union board, when considering the expansion of a charter, shall consider the following:

- a. If the expansion is for an open charter, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the principal or branch office, must be clearly spelled out;
- b. The negative impact to any other state or federally chartered credit union in the expanded area;
- c. ~~The expressed need in the expansion area;~~
- d. Any expressed opposition to the expansion by any other credit union;
- e. ~~If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;~~
- f. d. The credit union must demonstrate the ability to succeed in expanding their field of membership;
- g. ~~e.~~ Relevant public comment in favor of or in opposition to expanding the field of membership; and
- h. f. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective October 1, 1997; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-05. Field of membership of continuing credit union in the event of merger. In the event of a merger between credit unions with different geographic fields of membership, the surviving credit union may, at the election of the surviving credit union, expand its field of membership to include the geographic field of membership of the merged credit union.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

CHAPTER 13-03-15

13-03-15-02. Establishment of a branch.

1. Any North Dakota state-chartered credit union may establish a branch facility subject to approval of the state credit union board and in accordance with the provisions of this chapter.
2. All branch facility advertising and building signs must state the identity of the credit union and facility. ~~For example, (name of credit union) (location of main office) "Branch". Those credit unions that already have a sign on the branch building need not change the sign until actual renovation or a sign change is made if a significant cost is necessary to comply with this section.~~

History: Effective April 1, 1988; amended effective October 1, 1990; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-15-04. Application to establish a branch.

1. A credit union wishing to establish a branch shall comply with the following:
 - a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board;
 - b. After approval by the credit union's board of directors, application must be made to the state credit union board to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of financial institutions;
 - c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county or counties affected by the proposed branch expansion. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and
 - d. The notice must specify the time and place of the meeting of the state credit union board at which the application for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

2. The state credit union board, when considering the branching of a credit union, shall consider the following:
 - a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;
 - b. The negative impact to any other state or federally chartered credit union in North Dakota;
 - c. ~~The expressed need in the branching area;~~
 - d. Any expressed opposition to the branch by any other credit union in North Dakota;
 - e. d. If the branch is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;
 - f. e. The credit union must demonstrate ability to succeed with the branch; and
 - g. f. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective June 1, 2002; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-19
LEASING

<u>Section</u>	
<u>13-03-19-01</u>	<u>Authorization</u>
<u>13-03-19-02</u>	<u>Definitions</u>
<u>13-03-19-03</u>	<u>Lease Requirements</u>
<u>13-03-19-04</u>	<u>Lease Policy Required</u>
<u>13-03-19-05</u>	<u>Limitations</u>
<u>13-03-19-06</u>	<u>Appeal to State Credit Union Board</u>

13-03-19-01. Authorization. A state-chartered credit union may engage in direct leasing, indirect leasing, open-end leasing, or closed-end leasing subject to the limitations prescribed under this chapter.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-19-02. Definitions. For purposes of this rule, the following definitions will apply:

1. "Closed-end lease" means the credit union assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end. However, the member is responsible for any excess wear and tear and excess mileage charges as established under the lease.
2. "Direct lease" means the credit union purchases personal property from a vendor, becoming the owner of the property at the request of a member of the credit union and then leases the property to that member.
3. "Full payout lease" means a lease in which the lessor's service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.
4. "Inception of the lease" means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the credit union. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction.
5. "Independent third-party appraiser" means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised

or the parties involved with the transaction. The credit union shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.

6. "Indirect lease" means a third party leases property to a member of the credit union and the credit union then purchases the lease from the third party for the purposes of leasing the property to the member.
7. "Lease servicer" means the entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing credit union or maintains lease records for a fee.
8. "Leasing company" means the enterprise that makes leases or assembles leases for resale to a credit union.
9. "Lessee" means the party using the leased property.
10. "Lessor" means the party owning the leased property.
11. "Open-end lease" means the member of the credit union assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end.
12. "Residual value" means the estimated fair value of the leased property at the end of the lease term.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-19-03. Lease requirements.

1. The lease must be a net lease. In a net lease, your member assumes all the burdens of ownership, including maintenance and repair, licensing and registration, taxes, and insurance.
2. The lease must be a full payout lease. In a full payout lease, you must reasonably expect to recoup your entire investment in the leased property, plus the estimated cost of financing, from the lessee's payments and the estimated residual value of the leased property at the expiration of the lease term.
3. The amount of the estimated residual value to satisfy the full payout lease requirement shall not exceed twenty-five percent of the original cost of the leased property unless the amount above twenty-five percent is guaranteed. Estimated residual value must be reasonable in light of the leased property and all circumstances relevant to the leasing arrangement.

4. When the credit union does not own the leased property in an indirect leasing arrangement, the credit union must:
 - a. Obtain a full assignment of the lease. A full assignment is the assignment of all the rights, interests, obligations, and title in the lease.
 - b. Be named as the sole lienholder of the leased property.
 - c. Receive a security agreement, signed by the leasing company, granting the credit union a sole lien in the leased property and the right to take possession and dispose of the leased property in the event of a default by the lessee, a default in the leasing company's obligations to the credit union, or a material adverse change in the leasing company's financial condition.
 - d. Take all necessary steps to record and perfect the credit union's security interest in the leased property.
5. The credit union must retain salvage powers over the leased property.
6. The credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the coinsured if the credit union does not own the leased property. The credit union must use an insurance company with a nationally recognized industry rating of at least a B+.
7. The credit union member must carry the normal liability and property insurance on the leased property. The credit union must be named as an additional insured on the liability insurance policy and as loss payee on the property insurance policy.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-19-04. Lease policy required. The board of directors of the credit union will formulate and maintain a written lease policy. At a minimum, the lease policy should address the following:

1. Identify acceptable lease servicers and lessors, for purchased leases only.
2. Establish aggregate volume of paper to be purchased from approved servicers and lessors, for purchased leases only.
3. Identify the geographic area where the credit union will consider purchasing or originating leases.

4. Establish lease portfolio diversification standards.
5. Set appropriate terms and conditions by type of leases.
6. Establish lease approval and origination procedures.
7. Establish prudent underwriting standards.
8. Establish lease administration procedures.
9. Establish appraisal and evaluation programs.
10. Monitor the lease portfolio and provide timely reports to the board of directors.
11. Set forth permitted exceptions to policy.
12. Require an independent credit analysis of the lessee.
13. Require the credit union to obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within forty-five calendar days from the date of inception with original documentation to be maintained in the credit file.
14. Require a credit union officer or an independent third-party appraiser to conduct at inception, and annually thereafter, an inspection of the leased tangible property for all leases greater than one hundred thousand dollars and to document the credit file with the inspection report.
15. Require rental payments to be made on a periodic basis no less frequently than annually.
16. Require the term of the lease not to exceed seven years.
17. Require an annual analysis of the financial condition of the leasing company or lease servicer. This will include the review of an annual opinion audit by a certified public accountant.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-19-05. Limitations. A credit union's investment in purchased leases from a single leasing company or affiliated leasing companies shall not exceed ten percent of the net worth of the credit union.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-19-06. Appeal to state credit union board. A credit union may appeal to the state credit union board for an increase in the limitation in purchased leases under section 13-03-19-05.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-20
PARTICIPATION LOANS

Section

13-03-20-01

Definitions

13-03-20-02

Authorization

13-03-20-01. Definitions. For purposes of this section:

1. "Credit union" means any state-chartered or federal-chartered credit union.
2. "Credit union organization" means any organization as determined by the state credit union board established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations, or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operations of credit unions.
3. "Eligible organization" means a credit union, credit union organization, or financial organization.
4. "Financial organization" means any federally chartered or federally insured financial institution and the Bank of North Dakota.
5. "Originating lender" means the participant with which the member contracts.
6. "Participation loan" means a loan in which one or more eligible organizations participate pursuant to a written agreement with the originating lender.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-20-02. Authorization.

1. Subject to the provisions of this section, any state-chartered credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, provided:
 - a. A written master participation agreement shall be properly executed, acted upon by the state-chartered credit union's board of directors, or if the board has so delegated in its policy, the investment committee or senior management officials and retained

in the state-chartered credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.

b. A state-chartered credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

2. An originating lender which is a state-chartered credit union shall:

a. Originate loans only to its members;

b. Retain an interest of at least ten percent of the face amount of each loan;

c. Retain the original or copies of the loan documents; and

d. Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from nonparticipation loan underwriting standards.

3. A participant state-chartered credit union that is not an originating lender shall:

a. Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

b. Participate in participation loans only if made to its own members or members of another participating credit union, eligible organization, or financial organization;

c. Retain the original or a copy of the written participation loan agreement and a schedule of loans covered by the agreement; and

- d. Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-21
PURCHASE, SALE, AND PLEDGE OF ELIGIBLE OBLIGATIONS

Section

13-03-21-01

Definitions

13-03-21-02

Authorizations

13-03-21-01. Definitions. For purposes of this section:

1. "Eligible obligation" means a loan or group of loans.
2. "Student loan" means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the federal government, of a state government, or any agency of either.
3. "Unimpaired capital and surplus" means the total of a credit union's net worth and member shares.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-21-02. Authorizations.

1. **Purchase.**

a. A credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

- (1) Eligible obligations of its members, originating from any source in the state of North Dakota, if either they are loans it is empowered to grant or they are refinanced with the consent of the borrowers, within sixty days after they are purchased, so that they are loans it is empowered to grant;
- (2) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;
- (3) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and
- (4) Real estate-secured loans, originating from any source in the state of North Dakota, if the purchaser is granting

real estate-secured loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A pool must include a substantial portion of the credit union's members' loans and must be sold promptly.

b. A credit union may make purchases in accordance with this subsection provided:

- (1) The board of directors or investment committee approves the purchase; and
- (2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office; and for purchases under paragraph 2 of subdivision a, any advance written approval from the national credit union administration required by section 741.8 of national credit union administration rules and regulations is obtained before consummation of such purchase.

c. The aggregate of the unpaid balance of eligible obligations under this subsection cannot exceed five percent of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this five percent limitation:

- (1) Student loans purchased in accordance with paragraph 3 of subdivision a;
- (2) Real estate loans purchased in accordance with paragraph 4 of subdivision a;
- (3) Eligible obligations purchased in accordance with paragraph 1 of subdivision a that are refinanced by the purchaser so that it is a loan it is empowered to grant; and
- (4) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the credit union makes the final underwriting decision and the sales or lease contract is assigned to the credit union very soon after it is signed by the member and the dealer or leasing company.

2. **Sale.** A credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of subsection 1, student loans purchased in accordance with paragraph 3 of subdivision a of subsection 1, and real estate loans purchased in accordance with

paragraph 4 of subdivision a of subsection 1, within the limitations of the board of directors' written sale policies, provided:

- a. The board of directors or investment committee approves the sale; and
- b. A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

3. Pledge.

a. A credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of subsection 1, student loans purchased in accordance with paragraph 3 of subdivision a of subsection 1, and real estate loan purchased in accordance with paragraph 4 of subdivision a of subsection 1, within the limitations of the board of directors written pledge policies, provided:

- (1) The board of directors or investment committee approves the pledge;
- (2) Copies of the original loan documents are retained; and
- (3) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

b. The pledge agreement shall identify the eligible obligations covered by the agreement.

4. **Servicing.** A credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

5. **Ten percent limitation.** The total indebtedness owing to any credit union by any person, inclusive of retained and reacquired interests, shall not exceed ten percent of its unimpaired capital and surplus.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-22 **INVESTMENT ACTIVITIES**

<u>Section</u>	
<u>13-03-22-01</u>	<u>Definitions</u>
<u>13-03-22-02</u>	<u>Permissible Investments</u>
<u>13-03-22-03</u>	<u>Prohibited Investments</u>
<u>13-03-22-04</u>	<u>Permissible Investment Activities</u>
<u>13-03-22-05</u>	<u>Prohibited Investment Activities - Adjusted Trading or Short Sales</u>
<u>13-03-22-06</u>	<u>Investment Policies</u>
<u>13-03-22-07</u>	<u>Recordkeeping and Documentation Requirements</u>
<u>13-03-22-08</u>	<u>Discretionary Control Over Investments</u>
<u>13-03-22-09</u>	<u>Credit Analysis Required</u>
<u>13-03-22-10</u>	<u>Notice of Noncompliant Investments</u>
<u>13-03-22-11</u>	<u>Broker-Dealers</u>
<u>13-03-22-12</u>	<u>Safekeeping of Investments</u>
<u>13-03-22-13</u>	<u>Valuing Securities</u>
<u>13-03-22-14</u>	<u>Monitoring Securities</u>
<u>13-03-22-15</u>	<u>Application Required</u>

13-03-22-01. Definitions. The following definitions apply to this chapter:

1. "Adjusted trading" means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current market value.
2. "Borrowing repurchase transaction" means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or identical security from the counterparty at a specified future date and at a specified price.
3. "Call" means an option that gives the holder the right to buy the underlying security at a specified price during a fixed time period.
4. "Derivatives" means financial instruments or other contracts whose value is based on the performance of an underlying financial asset, index, or other investment that has the three following characteristics:
 - a. It has one or more underlyings and one or more notional amounts or payment provisions or both that determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required;
 - b. It requires no initial net investment or an initial net investment that is less than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and

- c. Its terms require or permit net settlement, it can readily be settled net by means outside the contract, or it provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.
5. "Embedded option" means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cashflows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.
6. "Eurodollar deposit" means a United States dollar denominated deposit in a foreign branch of a United States depository institution.
7. "European financial options contract" means an option that can be exercised only on its expiration date.
8. "Fair value" means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, as opposed to a forced or liquidation sale.
9. "Financial options contract" means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.
10. "Industry-recognized information provider" means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.
11. "Investment repurchase transaction" means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.
12. "Maturity" means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.
13. "Put" means a financial options contract that entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.
14. "Real estate mortgage investment conduit" means a mortgage passthrough security and is synonymous with the terms MBS and passthrough. The scope of the MBS market extends to structured mortgage securities such as CMOs, REMICs, and strips, for which passthroughs are the most common form of collateral.

15. "Registered investment company" means an investment company that is registered with the securities and exchange commission under the Investment Company Act of 1940 [15 U.S.C. 80a]. Examples of registered investment companies are mutual funds and unit trust investments.
16. "Residual interest" means the remainder cashflows from collateralized mortgage obligations or real estate mortgage conduits (CMOs or REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.
17. "Security" means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:
 - a. Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;
 - b. Is of a type commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - c. Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.
18. "Weighted average life" means the weighted average time to the return of a dollar of principal. Calculated by multiplying each portion of principal received by the time at which it is expected to be received, based on a reasonable and supportable estimate of that time, and then summing and dividing by the total amount of principal.
19. "Zero coupon investment" means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-02. Permissible investments. A credit union may invest in the following types of investments:

1. Bonds of the United States without limitation in securities issued as direct obligations of the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.

2. Bonds or evidences of debt of this state or in bonds of states of the United States.
3. Bonds or certificates of indebtedness of any county, city, or school district in this state, issued pursuant to authority of law, subject to a limitation of thirty percent of the assets of the credit union.
4. First lien, public utility, industrial, corporation, or association bonds, notes or other evidences of debt issued by corporations located in the United States to the extent authorized under chapter 13-03-03. These investments must be rated as investment grade or better by an industry-recognized information provider such as Moody's, Standard & Poors, or Fitch.
5. Shares of a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for state-chartered credit unions.
6. Corporate credit union shares or deposits, including paid-in or membership capital. A credit union's aggregate amount of paid-in capital and membership capital in one corporate credit union is limited to two percent of its assets measured at the time of investment or adjustment. A credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of its assets measured at the time of investment or adjustment.
7. Certificates of deposit or other deposits issued by federally insured state or national banks, mutual savings banks, trust companies, or issued by an insured financial institution located in a territory of the United States that is either insured by the federal deposit insurance corporation or by the national credit union administration. Included in these deposits are yankee dollar deposits, Eurodollar deposits, banker's acceptances, deposit notes, and bank notes with original weighted average maturities of less than five years.
8. Variable rate investments as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this section, the United States dollar-denominated London interbank offered rate (LIBOR) is a domestic interest rate.

9. A fixed rate or variable rate collateralized mortgage obligation or real estate mortgage investment conduit issued by an agency of the federal government.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-03. Prohibited investments. A credit union cannot invest in the following types of investments:

1. Any privately issued collateralized mortgage obligation or real estate mortgage investment conduit.
2. Any financial derivative, such as futures, options, interest rate swaps, or forward rate agreements.
3. Any zero coupon investment with a maturity date that is more than ten years from the settlement date.
4. Any mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by the member.
5. Any stripped mortgage-backed securities, residual interests in collateralized mortgage obligations or real estate mortgage investment conduits, or small business-related securities.
6. Any commercial mortgage-related security that is not permitted by chapter 13-03-03.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-04. Permissible investment activities.

1. Regular way settlement and delivery versus payment basis. A credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.
2. Federal funds. A credit union may sell federal funds to an institution described in subsection 4 of North Dakota Century Code section 6-06-06 and credit unions, as long as the interest or other consideration received from the financial institution is at the market rate for federal funds transactions.

3. Investment repurchase transaction. A credit union may enter into an investment repurchase transaction so long as:
 - a. Any securities the credit union receives are permissible investments for state-chartered credit unions; the credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the federal reserve book entry securities transfer system; the credit union, or its agent receives a daily assessment of their market value, including accrued interest; and the credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and
 - b. The credit union has entered into signed contracts with all approved counterparties.
4. Borrowing repurchase transaction. A credit union may enter into a borrowing repurchase transaction so long as:
 - a. The transaction meets the requirements of subsection 3:
 - b. Any cash the credit union receives is subject to the borrowing limit specified in North Dakota Century Code section 6-06-19 and any investments the credit union purchases with that cash are permissible for credit unions; and
 - c. The investments referenced in subdivision b mature no later than the maturity of the borrowing repurchase transaction.
5. Securities lending transaction. A credit union may enter into a securities lending transaction so long as:
 - a. The credit union receives written confirmation of the loan:
 - b. Any collateral the credit union receives is a legal investment for credit unions; the credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the federal reserve book entry securities transfer system; the credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest; and the credit union maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;
 - c. Any cash the credit union receives is subject to the borrowing limit specified in North Dakota Century Code section 6-06-19 and any investments the credit union purchases with that cash are permissible for credit unions and mature no later than the maturity of the transaction; and

- d. The credit union has executed a written loan and security agreement with the borrower.
- 6. a. Trading securities. A credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.
- b. A credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the credit union commits, orally or in writing, to purchase or sell a security.
- c. At least monthly, the credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-05. Prohibited investment activities - Adjusted trading or short sales. A credit union may not engage in adjusted trading or short sales.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-06. Investment policies. A credit union's board of directors must establish written investment policies consistent with North Dakota Century Code chapter 6-06, this part, and other applicable laws and regulations and must review this policy at least annually. These policies may be a part of a broader asset-liability management policy. Written investment policies must address the following:

1. The purposes and objectives of the credit union's investment activities;
2. The characteristics of the investments the credit union may make, including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;
3. How the credit union will manage interest rate risk;
4. How the credit union will manage liquidity risk;
5. How the credit union will manage credit risk, including specifically listing institutions, issuers, and counterparties that may be used, or criteria for their selection, and limits on the amounts that may be invested with each;

6. How the credit union will manage concentration risk, which can result from dealing with a single issuer or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;
7. Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the credit union may be voting members of an investment-related committee;
8. The broker-dealers the credit union may use;
9. The safekeepers the credit union may use;
10. How the credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of this part; and
11. How the credit union will conduct investment trading activities, if applicable, including addressing:
 - a. Who has purchase and sale authority;
 - b. Limits on trading account size;
 - c. Allocation of cashflow to trading accounts;
 - d. Stop loss or sale provisions;
 - e. Dollar-size limitations of specific types, quantity, and maturity to be purchased;
 - f. Limits on the length of time an investment may be inventoried in a trading account; and
 - g. Internal controls, including segregation of duties.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-07. Recordkeeping and documentation requirements.

1. Credit unions with assets of ten million dollars or greater must comply with all generally accepted accounting principles applicable to reports or statements required to be filed with the national credit union administration. Credit unions with assets less than ten million

dollars are encouraged to do the same, but are not required to do so. Credit unions with assets less than ten million dollars may choose to account for their investments consistent with the national credit union administration accounting manual for federal credit unions.

2. A credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been examined in accordance with North Dakota Century Code section 6-06-08. The documentation should include, when applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by credit union's investment policy and this chapter.
3. A credit union must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been examined in accordance with North Dakota Century Code section 6-06-08.
4. A credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-08. Discretionary control over investments. A credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-09. Credit analysis required. A credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the United States government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the national credit union administration or the federal deposit insurance corporation. A credit union must update this analysis at least annually for as long as it holds the investment.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-10. Notice of noncompliant investments. A credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of this chapter. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell it. The credit union must notify in writing the commissioner of the department of financial institutions of an investment that has failed a requirement of this chapter within five days of the board meeting.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-11. Broker-dealers.

1. A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the securities and exchange commission under the Securities Exchange Act of 1934 [15 U.S.C. 781 et seq.] or is a depository institution whose broker-dealer activities are regulated by a federal or state regulatory agency.
2. Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following:
 - a. The background of any sales representative with whom the credit union is doing business;
 - b. Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the national association of securities dealers and the North American securities administrators association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and
 - c. If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

3. The requirements of subsection 1 do not apply when the credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-12. Safekeeping of investments.

1. A credit union's purchased investments and repurchase collateral must be in the credit union's possession, recorded as owned by the credit union through the federal reserve book entry system, or held by a board-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise at least ordinary care. The written custodial agreement will also include a provision that the safekeeper cannot use the credit union's securities for collateral on any borrowings of the safekeeper.
2. Any safekeeper used by a credit union must be regulated and supervised by either the securities and exchange commission, a federal or state depository institution regulatory agency, or a state trust company regulatory agency.
3. A credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.
4. Annually, the credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-13. Valuing securities.

1. Before purchasing or selling a security, a credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.
2. At least monthly, a credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price

quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

3. At least annually, the credit union's supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or a safekeeper. The credit union's supervisory committee or external auditor must follow generally accepted auditing standards, which require either recomputation or reference to market quotations.
4. If a credit union is unable to obtain a price quotation required by this section for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-14. Monitoring securities.

1. At least monthly, a credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month-end, with summary information for the entire portfolio.
2. At least quarterly, a credit union must prepare a written report setting forth the sum of fair values of all fixed and variable rate securities held, including deposits in other financial institutions, that have one or more of the following features:
 - a. Embedded options;
 - b. Remaining maturities greater than three years; or
 - c. Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.
3. When the amount calculated in subsection 2 is greater than a credit union's net worth, the report described in that paragraph must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus or minus three hundred basis points on:
 - a. The fair value of each security in the credit union's portfolio;
 - b. The fair value of the credit union's portfolio as a whole; and
 - c. The credit union's net worth.

4. If the credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in subsections 1 through 3. If the credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-15. Application required. A state-chartered credit union may invest in any other investment or engage in any other investment activity that a federal-chartered credit union may invest in or engage in subject to an application to the state credit union board and approval from the state credit union board, subject to any limitations the state credit union board may place on the credit union.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-23
CREDIT UNION SERVICE ORGANIZATIONS

<u>Section</u>	
<u>13-03-23-01</u>	<u>Authority to Invest in Credit Union Service Organizations</u>
<u>13-03-23-02</u>	<u>Definitions</u>
<u>13-03-23-03</u>	<u>Application</u>
<u>13-03-23-04</u>	<u>Hearing</u>
<u>13-03-23-05</u>	<u>Permissible Services and Activities</u>
<u>13-03-23-06</u>	<u>Limitations on Investments in Credit Union Service Organizations</u>
<u>13-03-23-07</u>	<u>Conflict of Interest</u>
<u>13-03-23-08</u>	<u>Examinations</u>

13-03-23-01. Authority to invest in credit union service organizations.
State credit unions may invest in credit union service organizations subject to the limitation provided for in this chapter and subject to approval by order of the board.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-02. Definitions. Unless the context otherwise requires, terms in this chapter have the following meanings:

1. "Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.
2. "Credit union service organization" means a financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.
3. "Equity" means the total of regular reserves, investment valuation reserve, other reserves, and undivided earnings as reported on the most recent year-end call report.
4. "Immediate family member" means a spouse or other family member living in the same household.
5. "Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee; chief executive officer (typically this individual holds the title of president or treasurer or manager); any assistant chief executive officers, e.g.,

assistant president, vice president, or assistant treasurer or manager; and the chief financial officer or comptroller.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-03. Application. An application to establish a credit union service organization must be submitted to the board in writing and must contain the following:

1. A full explanation and complete documentation of the proposed credit union service organization.
2. A listing of proposed management and their qualifications.
3. A proposed business plan with financial projections for at least three years.
4. Any additional information as requested by the board or commissioner.

Once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration. The board shall issue an order to either approve or disapprove the application. Upon notice of disapproval, the applicant has fifteen days to petition for a hearing before the board.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-04. Hearing. A public hearing by the board may be required on applications to invest in credit union service organizations whenever the board or commissioner determines that it is in the public interest to hold such a hearing or whenever a credit union or party requests an opportunity to be heard is granted. Notice of hearing on an application will be issued at least thirty days prior to the hearing on the application.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-05. Permissible services and activities. A state credit union may invest upon approval by order of the board in those credit union service organizations that provide one or more of the following services and activities:

1. The credit union service organization may conduct the following services and activities without approval of the board, but subject to applicable state licensing requirements:

- a. Credit card and debit card services;
- b. Check cashing and wire transfers;
- c. Internal audits for credit unions;
- d. Automated teller machine services;
- e. Electronic funds transfer services;
- f. Accounting services;
- g. Data processing;
- h. Shared credit union branch (service center) operations;
- i. Sale of repossessed collateral;
- j. Management, development, sale or lease of fixed assets;
- k. Sale, lease, or servicing of computer hardware or software;
- l. Management and personnel training and support;
- m. Payment item processing;
- n. Locator services;
- o. Marketing services;
- p. Research services;
- q. Record retention and storage;
- r. Microfilm and microfiche services.
- s. Alarm monitoring and other security services;
- t. Debt collection services;
- u. Credit analysis;
- v. Coin and currency services;
- w. Provision of forms and supplies;
- x. Income tax preparation; and

- y. Provision of vehicle warranty programs.
2. The credit union service organization may not initiate the following services and activities after December 1, 1992, without approval of the board, and subject to applicable state licensing requirements:
 - a. Consumer mortgage loan origination;
 - b. Loan processing, servicing, and sales;
 - c. Financial planning and counseling;
 - d. Retirement counseling;
 - e. Investment counseling;
 - f. Securities brokerage services;
 - g. Estate planning;
 - h. Acting as administrator for prepaid legal service plans, developing, and administering individual retirement account, Keogh, deferred compensation, and other personnel benefit plans, trust services;
 - i. Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity;
 - j. Real estate brokerage services;
 - k. Travel agency services;
 - l. Agency for sale of insurance; and
 - m. Personal property leasing.
 3. The board may approve any service or activity which is not authorized in subsection 1 or 2, subject to approval by the national credit union administration.
 4. The board in granting approval for a service or activity shall consider all relevant factors, including:
 - a. Whether the credit union service organization management or staff possesses adequate expertise or skills to perform the service or activity; and

- b. Whether the proposed activity or service is reasonably expected to be profitable.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-06. Limitations on investments in credit union service organizations. The following limitations apply to state credit unions for investments in credit union service organizations:

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations in an amount exceeding ten percent of its equity. The board may waive this limitation for a credit union investment in a credit union service organization existing before December 1, 1992.
2. Credit unions may not make loans to a credit union service organization in which it is affiliated in an amount exceeding ten percent of its equity.
3. Any credit union currently holding an investment in a credit union service organization shall apply to the board for approval to engage in any additional service or activity.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-07. Conflict of interest. Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the state credit union for the services provided by the individual.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-08. Examinations. A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization for the

purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08

CHAPTER 13-03-24
FIDELITY BOND AND INSURANCE COVERAGE OF CREDIT UNIONS

Section

<u>13-03-24-01</u>	<u>Fidelity Bond Required</u>
<u>13-03-24-02</u>	<u>Annual Review Required</u>
<u>13-03-24-03</u>	<u>Acceptable Bond Forms</u>
<u>13-03-24-04</u>	<u>Required Minimum Amount of Coverage</u>
<u>13-03-24-05</u>	<u>Maximum Allowable Deductibles</u>
<u>13-03-24-06</u>	<u>Additional Coverage Required</u>

13-03-24-01. Fidelity bond required. All credit unions are required to have a fidelity bond for credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, and similar losses caused by persons outside the credit union.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-02. Annual review required. The board of directors of each credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potential risks facing the credit union and the minimum requirements set by the state credit union board.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-03. Acceptable bond forms. At a minimum, the bond coverage must:

1. Be purchased in an individual policy from a company holding a certificate of authority from the secretary of the treasury.
2. Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members.
3. Be a bond form that has been approved by the national credit union administration board. The following basic bonds have been approved:

<u>Credit Union Form No.</u>	<u>Carrier</u>
<u>Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950)</u>	<u>Various</u>
<u>Extended Form 23</u>	<u>USFG</u>

<u>Credit Union Form No.</u>	<u>Carrier</u>
<u>100</u>	<u>CUMIS (only approved for corporate credit union use)</u>
<u>200</u>	<u>CUMIS</u>
<u>300</u>	<u>CUMIS</u>
<u>400</u>	<u>CUMIS</u>
<u>AIG 23</u>	<u>National Union Fire Insurance Co. of Pittsburgh, PA</u>
<u>Reliance Preferred 23</u>	<u>Reliance Insurance Company</u>
<u>Form 31</u>	<u>ITT Hartford</u>
<u>Form 24 with Credit Union Endorsement</u>	<u>Continental (only approved for corporate credit union use)</u>
<u>Form 40325</u>	<u>St. Paul Fire and Marine</u>
<u>Form F2350</u>	<u>Fidelity & Deposit Co. of Maryland</u>
<u>Form 9933 (6/97)</u>	<u>Progressive Casualty Insurance Co.</u>
<u>Credit Union Blanket Bond (1/96)</u>	<u>Cooperativas de Seguros Multiples de Puerto Rico</u>

4. Be approved by the national credit union administration board if not in the table above.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-04. Required minimum amount of coverage.

1. The minimum required amount of fidelity bond coverage for any single loss is computed based upon a credit union's total assets.

<u>Assets</u>	<u>Minimum Bond</u>
<u>\$0 to \$10,000</u>	<u>Coverage equal to the credit union's assets</u>
<u>\$10,001 to \$1,000,000</u>	<u>\$10,000 for each \$100,000 or fraction thereof</u>
<u>\$1,000,001 to \$50,000,000</u>	<u>\$100,000 plus \$50,000 for each million or fraction over \$1,000,000</u>
<u>\$50,000,001 to \$295,000,000</u>	<u>\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000</u>
<u>Over \$295,000,000</u>	<u>\$5,000,000</u>

2. This is the minimum coverage required, but a credit union's board of directors should purchase additional coverage when circumstances warrant, such as cash on hand or cash in transit.
3. While the above is the minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:
 - a. The amount of the daily cash fund, i.e., daily cash plus anticipated daily money receipts on the credit union's premises; or
 - b. The total amount of the credit union's money in transit in any one shipment.
 - c. Increased coverage is not required pursuant to this subsection when the credit union temporarily increases its cash fund because of unusual events which cannot reasonably be expected to recur.
4. Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single loss limit of liability. This requirement does not apply to optional insurance coverage.
5. Any proposal to reduce the required bond coverage must be approved in writing by the state credit union board at least twenty days in advance of the effective date of the reduction.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-05. Maximum allowable deductibles.

1. The maximum amount of allowable deductibles is computed based on a credit union's asset size, as follows:

<u>Assets</u>	<u>Maximum Deductible</u>
<u>\$0 - \$100,000</u>	<u>No deductibles allowed</u>
<u>\$100,001 - \$250,000</u>	<u>\$1,000</u>
<u>\$250,001 - \$1,000,000</u>	<u>\$2,000</u>
<u>Over \$1,000,000</u>	<u>\$2,000 plus 1/1000 of total assets up to a maximum deductible of \$200,000</u>

2. The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the state credit union board.

3. A deductible may not exceed ten percent of a credit union's net worth.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-06. Additional coverage required. The state credit union board may require additional coverage when the board determines that a credit union's current coverage is inadequate. The credit union must purchase this additional coverage within thirty days.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-06

CHAPTER 13-03-25
SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

<u>Section</u>	
<u>13-03-25-01</u>	<u>Definitions</u>
<u>13-03-25-02</u>	<u>General Responsibilities of the Supervisory Committee</u>
<u>13-03-25-03</u>	<u>Audit Responsibility of the Supervisory Committee</u>
<u>13-03-25-04</u>	<u>Requirements for Verification of Accounts</u>
<u>13-03-25-05</u>	<u>Assistance From Outside, Compensated Person</u>
<u>13-03-25-06</u>	<u>Audit Report and Working Paper Maintenance and Access</u>
<u>13-03-25-07</u>	<u>Sanctions for Failure to Comply With This Chapter</u>
<u>13-03-25-08</u>	<u>Statutory Audit Remedies for Credit Unions</u>

13-03-25-01. Definitions.

1. "Balance sheet audit" means the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. Credit unions required to file call reports consistent with GAAP should ensure the audited balance sheet is likewise prepared on a GAAP basis. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cashflows.
2. "Compensated person" means any accounting or auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit or verification of members' accounts per calendar year, or both.
3. "Financial statement audit" or "opinion audit" means an audit of the financial statements of a credit union performed in accordance with GAAS by an independent person who is licensed by the state. The objective of a financial statement audit is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cashflows in conformity with GAAP, as defined herein.
4. "GAAP" means generally accepted accounting principles, which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.
5. "GAAS" means generally accepted auditing standards, which refers to the standards approved and adopted by the American institute

of certified public accountants which apply when an independent, licensed certified public accountant audits financial statements. Auditing standards differ from auditing procedures in that "procedures" address acts to be performed, whereas "standards" measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional judgment exercised in performing the audit and in preparing the report of the audit.

6. "Independent" means the impartiality necessary for the dependability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors, and others who may rely upon the report of a supervisory committee audit report.
7. "Internal control" means the process, established by the credit union's board of directors, officers, and employees designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition.
8. "Reportable conditions" means a matter coming to the attention of the independent, compensated auditor which in the auditor's judgment represents a significant deficiency in the design or operation of the internal control structure of the credit union which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.
9. "State-licensed person" means a certified public accountant or public accountant who is licensed by the state to perform accounting or auditing services for that credit union.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-02. General responsibilities of the supervisory committee.

1. **Basic.** The supervisory committee is responsible for ensuring that the board of directors and management of the credit union:
 - a. Meet required financial reporting objectives; and
 - b. Establish practices and procedures sufficient to safeguard members' assets.
2. **Specific.** To carry out the responsibilities set forth in subsection 1, the supervisory committee must determine whether:

- a. Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;
 - b. The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;
 - c. The relevant plans, policies, and control procedures established by the board of directors are properly administered; and
 - d. Policies and control procedures are sufficient to safeguard against error, conflict of interest, self-dealing, and fraud.
3. **Mandates.** In carrying out the responsibilities set forth in subsections 1 and 2, the supervisory committee must:
- a. Ensure that the credit union adheres to the measurement and filing requirements for reports filed with the commissioner for the department of financial institutions under North Dakota Century Code section 6-06-08 and with the national credit union administration board under part 741.6 of national credit union administration rules and regulations;
 - b. Perform or obtain a supervisory committee audit, as prescribed in section 13-03-25-04 and under North Dakota Century Code section 6-06-15;
 - c. Verify or cause the verification of members' accounts against the record of the credit union, as prescribed in section 13-03-25-06; and
 - d. Act to avoid imposition of sanctions for failure to comply with the requirements of this chapter, as prescribed in sections 13-03-25-07 and 13-03-25-08.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-03. Audit responsibility of the supervisory committee.

1. **Annual audit requirement.** A credit union is required to obtain an annual supervisory committee audit that occurs at least once every calendar year (period of performance) and must cover the period elapsed since the last audit period (period effectively covered).

2. **Financial statement audit.** Any credit union with assets greater than twenty-five million dollars as of its previous year-end call report must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so in this state. Any credit union with assets less than twenty-five million dollars may also choose this option. Prior to obtaining a financial statement audit, the credit union will make a good-faith attempt to obtain a copy of the peer review report of the auditing firm directly from the auditing firm to ensure the firm's auditing practices and procedures are in conformance with GAAS.
3. **Supervisory committee alternative to financial statement audit.** Any credit union with assets less than twenty-five million dollars must obtain either of the following options to a financial statement audit:
 - a. **Balance sheet audit.** A balance sheet audit performed by a person who is licensed to do so by this state.
 - b. **Audit per supervisory committee guide.** An audit performed by the supervisory committee, its internal auditor, or any other qualified person (such as a certified public accountant, public accountant, league auditor, credit union auditor consultant, former financial institutions examiner, etc.) in accordance with the procedures prescribed in the national credit union administration's supervisory committee guide. Qualified persons who are not state-licensed may not provide assurance services under this subsection.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-04. Requirements for verification of accounts.

1. **Verification obligation.** The supervisory committee, at least every two years, shall cause the accounts of members to be verified against the records of the treasurer of the credit union.
2. **Methods.** Any of the following methods may be used to verify members' passbooks and accounts, as appropriate:
 - a. **Controlled verification.** A controlled verification of one hundred percent of members' share and loan accounts.
 - b. **Statistical method.** A sampling method which provides for:
 - (1) Random selection;
 - (2) A sample which is representative of the population from which it is selected;

- (3) An equal choice of selecting each dollar in the population;
- (4) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives; and
- (5) Additional procedures to be performed if evidence provided by confirmations alone is not sufficient.

C. Nonstatistical method. When the verification is performed by an independent person licensed by the state, the auditor may choose among the sampling methods set forth in subdivisions a and b and nonstatistical sampling methods consistent with GAAS if such methods provide for:

- (1) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives to provide assurance that the general ledger accounts are fairly stated in relation to the financial statements taken as a whole;
- (2) Additional procedures to be performed by the auditor if evidence provided by confirmations alone is not sufficient; and
- (3) Documentation of the sampling procedures used and of their consistency with GAAS, to be provided to the commissioner of the department of financial institutions upon request.

3. Retention of records. The supervisory committee must retain the records of each verification of members' passbooks and accounts until it completes the next verification of members' passbooks and accounts.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-05. Assistance from outside, compensated person.

1. Unrelated to officials. A compensated auditor who performs a supervisory committee audit on behalf of a credit union may not be related by blood or marriage to any management employee, member of either the board of directors, the supervisory committee, or the credit committee, or loan officer of that credit union.
2. Engagement letter. The engagement of a compensated auditor to perform all or a portion of the scope of a financial statement audit or supervisory committee audit shall be evidenced by an engagement letter. In all cases, the engagement must be contracted directly with

the supervisory committee. The engagement letter must be signed by the compensated auditor and acknowledged therein by the supervisory committee prior to commencement of the engagement.

3. **Contents of letter.** The engagement letter shall:
 - a. Specify the terms, conditions, and objections of the engagement;
 - b. Identify the basis of accounting to be used;
 - c. If a supervisory committee guide audit, include an appendix setting forth the procedures to be performed;
 - d. Specify the rate of, or total, compensation to be paid for the audit;
 - e. Provide that upon completion of the engagement letter, the auditor shall deliver to the supervisory committee a written report of the audit and notice in writing, either within the report or communicated separately, of any internal control reportable conditions or irregularities or illegal acts, if any, which come to the auditor's attention during the normal course of the audit, i.e., no notice required if none noted;
 - f. Specify a target date of delivery of the written reports, such target date not to exceed one hundred twenty days from date of calendar or fiscal yearend under audit (period covered), unless the supervisory committee obtains a waiver from the commissioner of the department of financial institutions;
 - g. Certify that department of financial institution staff or national credit union administration staff, or both, will be provided unconditional access to the complete set of original working papers, either at the offices of the credit union or at a mutually agreed-upon location, for purposes of inspections; and
 - h. Acknowledge that working papers shall be retained for a minimum of three years from the date of the written report.
4. **Complete scope.** If the engagement is to perform a supervisory committee guide audit intended to fully meet the requirements of subdivision b of subsection 3 of section 13-03-25-03, the engagement letter shall certify that the audit will address the complete scope of that engagement.
5. **Exclusions from scope.** If the engagement is to perform a supervisory committee guide audit which will exclude any item required by the applicable section, the engagement letter shall:

- a. Identify the excluded items;
- b. State that, because of the exclusions, the resulting audit will not, by itself, fulfill the scope of the supervisory committee audit; and
- c. Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded items.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-06. Audit report and working paper maintenance and access.

1. **Audit report.** Upon completion or receipt, or both, of the written report of a financial statement audit or a supervisory committee audit, the supervisory committee must verify that the audit was performed and reported in accordance with the terms of the engagement letter prescribed herein. The supervisory committee must submit the reports to the board of directors and provide a summary of the results of the audit to the members of the credit union orally or in writing at the next annual meeting of the credit union. If a member so requests, the supervisory committee shall provide the member access to the full audit report. If the department of financial institutions or the national credit union administration so requests, the supervisory committee shall provide either the department of financial institutions or national credit union administration a copy of each of the audit reports it receives or produces.
2. **Working papers.** The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide the department of financial institutions or national credit union administration staff unconditional access to such working papers, either at the offices of the credit union or at a mutually agreed-upon location, for purposes of inspecting such working papers.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-07. Sanctions for failure to comply with this chapter. Failure of a supervisory committee or its independent compensated auditor or other person, or any of them, to comply with the requirements of this section, or the terms of the engagement letter required by this section, is ground for:

1. The commissioner to reject the supervisory committee audit and provide a reasonable opportunity to correct deficiencies;
2. The commissioner to impose the remedies available in section 13-03-25-08, provided any of the conditions specified therein is present; and
3. The national credit union administration board to seek formal administrative sanctions against the supervisory committee or its independent, compensated auditor, or both, pursuant to section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)].

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-08. Statutory audit remedies for credit unions.

1. **Audit by alternative licensed person.** The state credit union board may compel a credit union to obtain a supervisory committee audit which meets the minimum requirements of section 13-03-25-03 and which is performed by an independent person who is licensed by the state for any fiscal year in which any of the following three conditions is present:
 - a. The supervisory committee has not obtained an annual financial statement audit or performed a supervisory committee audit;
 - b. The supervisory committee has obtained a financial statement audit or performed a supervisory committee audit which does not meet the requirements of this chapter; or
 - c. The credit union has experienced serious and persistent recordkeeping deficiencies as defined in subsection 3.
2. **Financial statement audit required.** The state credit union board may compel a credit union to obtain a financial statement audit performed in accordance with GAAS by an independent person who is licensed by the state, even if such audit is not required by section 13-03-25-03, for any fiscal year in which the credit union has experienced serious and persistent recordkeeping deficiencies as defined in subsection 3. The objective of a financial statement audit performed under this subsection is to reconstruct the records of the credit union sufficiently to allow an unqualified or, if necessary, a qualified opinion on the credit union's financial statements. An adverse opinion or disclaimer of opinion should be the exception rather than the norm.
3. **Serious and persistent recordkeeping deficiencies defined.** A recordkeeping deficiency is serious if the state credit union board

reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets. A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected, or reasonable period of time.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

TITLE 33
STATE DEPARTMENT OF HEALTH

CHAPTER 33-15-01

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Coal conversion facility" means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.

- c. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.
7. "Control equipment" means any device or contrivance which prevents or reduces emissions.
 8. "Department" means the North Dakota state department of health.
 9. "Emission" means a release of air contaminants into the ambient air.
 10. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
 11. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to title 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to title 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
 12. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
 13. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
 14. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
 15. "Hazardous waste" has the same meaning as given by chapter 33-24-02.

16. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.
17. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
18. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
19. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
20. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
21. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
22. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
23. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
24. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
25. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted

directly into the ambient air without passing through an adequate stack, duct, or chimney.

26. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.
27. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
28. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
29. "Pesticide" includes:
 - a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
 - b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
 - c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscacides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
30. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.
31. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
32. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

33. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
34. "Premises" means any property, piece of land or real estate, or building.
35. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
36. "Process weight rate" means the rate established as follows:
 - a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
37. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
38. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.
39. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).
40. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
41. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.

42. "Source" means any property, real or personal, or person contributing to air pollution.
43. "Source operation" means the last operation preceding emission which operation:
 - a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
44. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
45. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.
46. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
47. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
48. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
49. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.

50. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~August 1, 2001~~ January 1, 2006, which is incorporated by reference.
51. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-05. Abbreviations. The abbreviations used in this article have the following meanings:

- A - ampere
- A.S.T.M. - American Society for Testing and Materials
- Btu - British thermal unit
- °C - degree Celsius (centigrade)
- cal - calorie
- CdS - cadmium sulfide
- cfm - cubic feet per minute
- CFR - code of federal regulations
- cu ft - cubic feet
- CO - carbon monoxide
- CO₂ - carbon dioxide
- dcf - dry cubic feet
- dcm - dry cubic meter
- dscf - dry cubic feet at standard conditions
- dscm - dry cubic meter at standard conditions
- eq - equivalents
- °F - degree Fahrenheit
- ft - feet
- g - gram
- gal - gallon
- g eq - gram equivalents
- gr - grain
- hr - hour

HCl	- hydrochloric acid
Hg	- mercury
H ₂ O	- water
H ₂ S	- hydrogen sulfide
H ₂ SO ₄	- sulfuric acid
Hz	- hertz
in.	- inch
j	- joule
°K	- degree Kelvin
k	- 1,000
kg	- kilogram
l	- liter
lpm	- liter per minute
lb	- pound
m	- meter
m ³	- cubic meter
meq	- milliequivalent
min	- minute
mg	- milligram - 10 ⁻³ gram
Mg	- megagram - 10 ⁶ gram
ml	- milliliter - 10 ⁻³ liter
mm	- millimeter - 10 ⁻³ meter
mol	- mole
mol.wt.	- molecular weight
mV	- millivolt
N ₂	- nitrogen
N	- newton
ng	- nanogram - 10 ⁻⁹ gram
nm	- nanometer - 10 ⁻⁹ meter
NO	- nitric oxide
NO ₂	- nitrogen dioxide
NO _x	- nitrogen oxides
O ₂	- oxygen
Pa	- pascal
PM ₁₀	- particulate matter with an aerodynamic diameter ≤ 10 μ <u>micrometers</u>
ppb	- parts per billion

ppm	- parts per million
psia	- pounds per square inch absolute
psig	- pounds per square inch gauge
°R	- degree Rankine
s-sec	- second
scf	- cubic feet at standard conditions
scfh	- cubic feet per hour at standard conditions
scm	- cubic meters at standard conditions
scmh	- cubic meters per hour at standard conditions
SO ₂	- sulfur dioxide
SO ₃	- sulfur trioxide
SO _x	- sulfur oxides
sq ft	- square feet
std	- at standard conditions
TSP	- total suspended particulate
µg	- microgram - 10 ⁻⁶ gram
V	- volt
W	- watt
Ω	- ohm

History: Amended effective January 1, 1989; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:
 - a. Identification of the specific facility to be taken out of service as well as its location and permit number.
 - b. The expected length of time that the air pollution control equipment will be out of service.
 - c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.

- d. Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.
- e. The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

2. Malfunctions.

- a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. On receipt of this notification, the department may permit the continuance of the operation for a period not to exceed ten days provided that written application is made to the department. Such application shall be made within twenty-four hours of the malfunction or within such other time period as the department may specify. In cases of major equipment failure, additional time period may be granted by the department provided a corrective program has been submitted by the person and approved by the department. The department shall be notified when the condition causing the malfunction has been corrected.
- b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is ~~701-328-2121~~ 701-328-9921.

- 3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method, acceptable to the department, for measuring or estimating emissions must be undertaken as soon as possible. Timely repair of the emission monitoring system must be made.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

CHAPTER 33-15-04

33-15-04-01. Refuse burning restrictions. No person may dispose of ~~refuse and other combustible material by open burning, or cause, allow conduct,~~ or permit open burning of refuse ~~and, trade waste, or~~ other combustible material, except as provided for in section 33-15-04-02 or 33-15-10-02, and no person may conduct, cause, or permit the conduct of a salvage operation by open burning.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996; January 1, 2007.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-04-02. Permissible open burning. The open burning of refuse ~~and~~ or other combustible material may be conducted as specified in this section if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. ~~All open burning must comply with the rural fire mitigation action guide included in the North Dakota rural fire contingency plan and with provisions of the state fire code.~~ Burning is prohibited if the fire index is in the extreme category as issued by the national weather service or if a burning ban is declared by state or local officials. The authority to conduct open burning under this section does not exempt or excuse a person from the consequences, damages, or injuries that may result therefrom.

1. The following types of burning are specifically authorized but are subject to the conditions listed in subsection 2 as well as any condition included as part of this subsection:
 - a. Fires purposely set for the instruction and training of public and industrial firefighting personnel.
 - b. Fires set for the elimination of a fire hazard that cannot be abated by any other means when authorized by the appropriate governmental entity, including the local fire department department or its designee.
 - c. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning may be initiated without prior notice to the department, provided notice is furnished as soon as practical.
 - d. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.
 - e. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance

with practices recommended by state or federal agencies, as appropriate, and the burning is approved in advance by the department. The state or federal agency shall, upon request by the department, submit an annual report that estimates the number of acres burned, the fuel loading, and the amount of emissions.

- f. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning.
 - g. The burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:
 - (1) No collection and disposal service is required or directed by a municipality or other government entity.
 - (2) The material to be burned ~~must be~~ is from a building accommodating no more than one family.
 - (3) The burning ~~must be~~ is conducted on the property on which the waste is generated.
 - h. The burning of liquid hydrocarbons that are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if the following conditions are met:
 - (1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.
 - (2) The burning must be approved in advance by the department, except as provided in subdivision c.
2. The following conditions apply to all types of permissible burning listed in subsection 1.
- a. No public nuisance is or will be created.
 - b. The burning must not be conducted upwind of, or in proximity to, an occupied building such that the ambient air of such occupied building may be adversely affected by the air contaminants being emitted.
 - c. Care must be used to minimize the amount of dirt on the material being burned and the material must be dry enough to burn cleanly.

- d. Oils, rubber, and other materials that produce unreasonable amounts of air contaminants may not be burned.
- e. The burning may be conducted only when meteorological conditions favor smoke dispersion and air mixing.
- f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.
- g. The burning must not be conducted adjacent to any operational military, commercial, county, municipal, or private airport or landing strip in such a manner as to create a hazard.
- h. Except in an emergency, burning may not be conducted in such proximity of any class I area, as defined in chapter 33-15-15, that the ambient air of such area is adversely impacted.
- i. Except in an emergency, the visibility of any class I area cannot be adversely impacted as defined in chapter 33-15-19.
- j. Burning activities must be attended and supervised at all times burning is in progress.
- k. ~~Burning is prohibited if the fire index is in the "extreme" category as issued by the national weather service. Notification to the department is required prior to starting the burn if the fire index is in the "very high" category.~~
- t. If state or local fire officials determine conditions to be unsafe for open burning, such burning must cease until conditions are deemed safe by such officials.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996; January 1, 2007.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12

33-15-12-02. Standards of performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c, and 60.35c, except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.
3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.

5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.32e(i) The following is added:

Title V permit to operate applications shall be submitted by September 15, 1999.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

- (b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

- (c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002, provided the facility owner or operator complies with the following:
 1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.

2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device within nine months of state plan approval.
3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.
4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.
5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.
6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.
7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.
8. Starts up the air pollution control device within twenty-eight months after state plan approval.
9. Notifies the department of the performance test thirty days prior to the test.
10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.
11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall:
 - i. Within six months after the United States environmental protection agency's approval of the state plan, submit documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation

of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

- ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.
2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.
 3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

Subpart Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for hot mix asphalt facilities.

Subpart J - Standards of performance for petroleum refineries.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

- (c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

~~Subpart L - Standards of performance for secondary lead smelters.~~

~~Subpart M - Standards of performance for secondary brass and bronze production plants.~~

~~Subpart N - Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.~~

~~Subpart Na - Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983.~~

Subpart O - Standards of performance for sewage treatment plants.

~~Subpart P - Standards of performance for primary copper smelters.~~

~~Subpart Q - Standards of performance for primary zinc smelters.~~

~~Subpart R - Standards of performance for primary lead smelters.~~

~~Subpart S - Standards of performance for primary aluminum reduction plants.~~

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

~~Subpart BB - Standards of performance for kraft pulp mills.~~

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure-sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in the synthetic organic chemicals manufacturing industry.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in petroleum refineries.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum drycleaners.

Subpart KKK - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymeric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incinerator units that commenced construction on or before November 30, 1999.

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 5.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule Increments of Progress and Compliance Schedules	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

Subpart HHHH - Emission guidelines and compliance times for coal-fired electric steam generating units.

Designated facilities to which the rule applies shall comply with the applicable requirements of 40 CFR 60.4101 through 60.4124 and 60.4140 through 60.4176.

Allocation of the mercury allowances shall be in accordance with 40 CFR 60.4142, except that in 2008 and annually thereafter the adjusted control period heat input for units commencing operations before January 1, 2001, must be recalculated annually and the allowance allocation for all units adjusted accordingly. In the recalculation of the adjusted control period heat input, the control period heat input for 2000 through 2004 must be used; however, the adjusted control period heat input must be recalculated using the average heat input for the different types of fuels combusted during the

three-year period just prior to the year in which the allocations are made, using the factors provided in 40 CFR 60.4142(a).

Alternatively, a contract to provide fuel for heat input to a unit during the year to which the allowance allocation will apply may be used to establish the adjusted control period heat input for that year if the contract is in effect and enforceable at the time the allowance allocation is made. If the budget unit does not combust the types of fuels provided for in the contract in the applicable year, the next allowance allocation for such unit shall be reduced by the amount of any excess allowances allocated. Any allowances due to this reduction shall be reallocated to the remaining budget units in proportion to their allowance allocation in the year in which the contract was not fulfilled.

The allowance allocations will be reported to the environmental protection agency administrator by October 31 of each year beginning in 2008 as provided in 40 CFR 60.4141.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on January 31, ~~2004~~ 2006, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 2002; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-13-01.2. Emission standards.

Subpart A - General provisions.

*61.02 - The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

The following definition is added:

"Waiver of compliance" means a permit to operate with a compliance schedule.

*Sections 61.07 and 61.08 are deleted in their entirety and replaced with the following:

Application for permit to construct. The owner or operator of any new source to which a standard prescribed under these subparts is applicable, prior to the date on which construction or modification is planned to commence, shall apply for and receive a permit to construct as provided in section 33-15-14-02. For those sources on which construction or modification has commenced and initial startup has not occurred prior to the effective date of a standard of this chapter, the owner or operator shall apply for a permit to construct within thirty days after the effective date of the standard.

Neither the submission of an application for a permit to construct nor the administrator's approval of construction or modification shall:

- (1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this chapter or of any other applicable federal, state, or local requirement; or

- (2) Prevent the administrator from implementing or enforcing this chapter or taking any other action under this article.

*61.09(b) is deleted in its entirety.

*61.11(f) is deleted in its entirety and replaced with the following:

- (f) The granting of a permit under this section does not abrogate the department's authority under section 33-15-01-06 and subsection 9 of section 33-15-14-02, and subsection 6 of section 33-15-14-03.

*61.16 is deleted in its entirety and replaced with the following:

Availability of information.

- a. Emission data provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public.
- b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

*61.17 is deleted in its entirety.

~~Subpart C - National emission standard for beryllium.~~

~~Subpart D - National emission standard for beryllium rocket motor firing.~~

~~Subpart E - National emission standard for mercury.~~

~~Subpart F - National emission standard for vinyl chloride.~~

Subpart G - [Reserved]

Subpart J - National emission standard for equipment leaks (fugitive emission sources) of benzene.

~~Subpart L - National emission standard for benzene emissions from coke byproduct recovery plants.~~

~~Subpart N - National emission standard for inorganic arsenic emissions from glass manufacturing plants.~~

~~Subpart O - National emission standard for inorganic arsenic emissions from primary copper smelters.~~

~~Subpart P - National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.~~

Subpart S - [Reserved]

Subpart U - [Reserved]

Subpart V - National emission standard for equipment leaks (fugitive emission sources).

~~Subpart Y - National emission standard for benzene emissions from benzene storage vessels.~~

~~Subpart BB - National emission standard for benzene emissions from benzene transfer operations.~~

Subpart FF - National emission standard for benzene waste operations.

Appendix A - National emission standards for hazardous air pollutants, compliance status information.

Appendix B - Test methods.

Appendix C - Quality assurance procedures.

History: Effective June 1, 1992; amended effective March 1, 1994; August 1, 1995; April 1, 1998; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

CHAPTER 33-15-14

33-15-14-02. Permit to construct.

1. **Permit to construct required.** No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, must be available at the department's offices.

The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner's or operator's own risk. These activities have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities conveys no rights to a permit to construct under this section.

2. **Application for permit to construct.**

- a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.
- b. A separate application is required for each new installation or source subject to this chapter.
- c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. **Alterations to source.**

- a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
- b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an

amount greater than that specified in subdivision a of subsection 5 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

- (1) Routine maintenance, repair, and replacement may not be considered a physical change.
 - (2) The following may not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.
 - (b) An increase in the hours of operation if it is not limited by a permit condition.
 - (c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.
 - (d) Trading of emissions within a facility provided:
 - [1] These trades have been identified and approved in a permit to operate; and
 - [2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.
 - (e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.
- C. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to section 33-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.
- a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering). These documents are incorporated by reference.
- b. When an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:
- (1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.
 - (2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).
 - (3) Written approval from the department must be obtained for any modification or substitution.
 - (4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

5. **Review of application - Standard for granting permits to construct.**
 The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

<u>Contaminant</u>	<u>Averaging Time (hours)</u>				
	Annual ($\mu\text{g}/\text{m}^3$)	24 ($\mu\text{g}/\text{m}^3$)	8 ($\mu\text{g}/\text{m}^3$)	3 ($\mu\text{g}/\text{m}^3$)	1 ($\mu\text{g}/\text{m}^3$)
SO ₂	1.0	5		25	25
PM ₁₀	1.0	5			
NO ₂	1.0				25
CO			500		2000

b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application.**

a. The following source categories are subject to the public participation procedures under this subsection:

- (1) Those affected facilities designated under chapter 33-15-13.
- (2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.
- (3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:
 - (a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds;

- (b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or
 - (c) Twenty-five tons [22.68 metric tons] per year or more of any combination of contaminants listed under section 112(b) of the Federal Clean Air Act.
 - (4) Sources which the department has determined to have a major impact on air quality.
 - (5) Those for which a request for a public comment period has been received from the public.
 - (6) Sources for which a significant degree of public interest exists regarding air quality issues.
 - (7) Those sources which request a federally enforceable permit which limits their potential to emit.
- b. With respect to the permit to construct application, the department shall:
- (1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.
 - (2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.
 - (3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.
 - (4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

- (5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.
- (6) Allow thirty days for public comment.
- (7) Consider all public comments properly received, in making the final decision on the application.
- (8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.
- (9) Take final action on the application within thirty days of the applicant's response to the public comments.
- (10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under subsection 5 of section 33-15-15-01 shall be followed.

7. **Denial of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify may be granted if such construction, or modification, or installation, will result in a violation of this article.

8. **Issuance of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.

9. **Permit to construct - Conditions.** The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:

- a. Sampling, testing, and monitoring of the facilities or the ambient air or both.
- b. Trial operation and performance testing.
- c. Prevention and abatement of nuisance conditions caused by operation of the facility.
- d. Recordkeeping and reporting.
- e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
- f. Limitation on hours of operation, production rate, processing rate, or fuel usage when necessary to assure compliance with this article.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope.**

- a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.
- b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct.** To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved]**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation and there is no applicable new source performance standard, or national emission standard for hazardous air pollutants.
- a. Maintenance, structural changes, or minor repair of process equipment, fuel burning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuel burning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.
 - b. Fossil fuel burning equipment, other than smokehouse generators, which meet all of the following criteria:
 - (1) The heat input per unit does not exceed ten million British thermal units per hour.
 - (2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.
 - (3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.
 - c.
 - (1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.
 - (2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.
 - (3) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33-15-02-04.
 - (4) The exemptions listed in paragraphs 1 and 2, and 3 do not apply to engines that are a utility unit as defined in section

33-15-21-08.1 or are subject to a standard under chapter 33-15-22.

- d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.
- e. Portable brazing, soldering, or welding equipment.
- f. The following equipment:
 - (1) Comfort air-conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.
 - (2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.
 - (3) Equipment used exclusively for steam cleaning.
 - (4) Porcelain enameling furnaces or porcelain enameling drying ovens.
 - (5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.
 - (6) Equipment used for hydraulic or hydrostatic testing.
- g. The following equipment or any exhaust system or collector serving exclusively such equipment:
 - (1) Blast cleaning equipment using a suspension of abrasive in water.
 - (2) Bakery ovens if the products are edible and intended for human consumption.
 - (3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.
 - (4) Confection cookers if the products are edible and intended for human consumption.
 - (5) Drop hammers or hydraulic presses for forging or metalworking.

- (6) Diecasting machines.
 - (7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.
 - (8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.
 - (9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.
 - (10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.
 - (11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.
- h. Natural draft hoods or natural draft ventilators.
 - i. Containers, reservoirs, or tanks used exclusively for:
 - (1) Dipping operations for coating objects with oils, waxes, or greases, if no organic solvents are used.
 - (2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.
 - (3) Storage of butane, propane, or liquefied petroleum or natural gas.
 - (4) Storage of lubricating oils.
 - (5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the requirements of chapter 33-15-12.
 - j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.
 - k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals

are poured or in which only the following metals are held in a molten state:

- (1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.
 - (2) Magnesium or any alloy containing over fifty percent magnesium.
 - (3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.
 - (4) Tin or any alloy containing over fifty percent tin.
 - (5) Zinc or any alloy containing over fifty percent zinc.
 - (6) Copper.
 - (7) Precious metals.
- I. Open burning activities within the scope of section 33-15-04-02.
 - m. Flares used to indicate some danger to the public.
 - n. Sources or alterations to a source which are of minor significance as determined by the department.
 - o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in ~~subdivision n~~ of subsection 1 of section 33-15-14-06.

14. Performance and emission testing.

- a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.
- b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to

construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

- c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
- d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

15. **Responsibility to comply.**

- a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.
- b. The exemption of any stationary source from the requirements of a permit to construct by reason of inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources.** Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.

17. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.

18. **Extensions of time.** The department may extend any of the time periods specified in subsections 4, 5, and 6 upon notification of the applicant by the department.

19. **Amendment of permits.** The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:

- a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.
- b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.
- c. Consideration by the department of all comments received in its order for modification.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2

Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

CHAPTER 33-15-16

33-15-16-02. Emissions of odorous substances restricted.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in North Dakota Century Code section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by North Dakota Century Code section 42-04-01 has been in operation for more than one year, as provided by North Dakota Century Code section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in North Dakota Century Code section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
 - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either North Dakota Century Code section 11-33-02 or 58-03-11, or if the setback distance under subsection 7 of North Dakota Century Code section 23-25-11 is greater than

one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [0.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

3. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department, including articles 33-16 and 33-20. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
4. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department has established a specific limitation by rule.
5. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

History: Amended effective June 1, 2001; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-16-02.1. Emissions of hydrogen sulfide restricted. No person may discharge into the ambient air hydrogen sulfide (H₂S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally accessed by the general public. For the purpose of complaint resolution under this section, two samples with concentrations greater than 0.05 parts per million (50 parts per billion) sampled at least fifteen minutes apart within a ~~sixty-minute~~

two-hour period and measured in accordance with section 33-15-16-04 constitute a violation.

History: Effective June 1, 1990; amended effective January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-16-04. Method of measurement. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this chapter, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement. In the case of hydrogen sulfide (H₂S) emissions, an ambient air analyzer designed for monitoring hydrogen sulfide (H₂S) must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved by the department.

History: Amended effective October 1, 1987; June 1, 1990; June 1, 2001; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-17

33-15-17-02. Restriction of fugitive particulate emissions. No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 33-15-17-02 any particulate matter which:

1. [Reserved]
2. Exceed the ambient air quality standards of chapter 33-15-02 at or beyond the property line of the source.
3. Exceed the prevention of significant deterioration of air quality increments of chapter 33-15-15 at or beyond the property line of the source for sources subject to chapter 33-15-15.
4. Exceed the restrictions on the emission of visible air contaminants of chapter 33-15-03, at or beyond the property line of the source.
5. Would have an adverse impact on visibility, as defined in chapter 33-15-19, on any class I federal area.
6. Agricultural activities related to the normal operations of a farm shall be exempt from the requirements of this section. However, agricultural practices such as tilling of land, application of fertilizers, and the harvesting of crops shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective January 1, 1996; January 1, 2007.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-21

33-15-21-08.1. Permits. The provisions of title 40, Code of Federal Regulations, part 72 and its appendices, as they exist on January 31, ~~2004~~ 2006, for purposes of implementing an acid rain program that meets the requirements of title IV of the federal Clean Air Act, are incorporated into this chapter by reference. The term "administrator" means the department except for those duties that cannot be delegated to the department. For those duties that cannot be delegated, "administrator" means the administrator of the United States environmental protection agency. If the provisions or requirements of title 40, Code of Federal Regulations, part 72, conflict with or are not included in section 33-15-14-06, the provisions of part 72 shall apply and take precedence.

History: Effective June 1, 2001; amended effective March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-01-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-09. Continuous emissions monitoring.

1. **General.** The monitoring, recordkeeping, and reporting of sulfur dioxide, nitrogen oxides, and carbon dioxide emissions, volumetric flow, and opacity data from affected units under the acid rain program shall be conducted in accordance with title 40, Code of Federal Regulations, part 75. Title 40, Code of Federal Regulations, part 75 and its appendices, as it exists they exist on January 31, ~~2004~~ 2006, are incorporated by reference.
2. **Exceptions.** Those portions of title 40, Code of Federal Regulations, part 75, that are controlled and administered completely by the United States environmental protection agency will not be enforced by the state. This should not be construed as precluding the United States environmental protection agency from exercising its statutory authority under the Clean Air Act, as amended, or an affected source from complying with the authority or the requirements of the federal acid rain program.

History: Effective December 1, 1994; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-10. Acid rain nitrogen oxides emission reduction program.
Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on January 31, ~~2004~~ 2006, are incorporated into this chapter by reference.

History: Effective April 1, 1998; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-01-04.1, 23-25-03

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on January 31, ~~2004~~ 2006, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for drycleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

~~Subpart W - National emissions standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production.~~

~~Table 1 to subpart W - General provisions applicability to subpart W.~~

~~Subpart X - National emissions standards for hazardous air pollutants from secondary lead smelting.~~

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

~~Subpart EE - National emissions standards for magnetic tape manufacturing operations.~~

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emissions standards for hazardous air pollutants from oil and natural gas production facilities.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emissions standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emissions standards for equipment leaks - Control level 1.

Subpart UU - National emissions standards for equipment leaks - Control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emissions standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emissions standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emissions standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

Subpart DDDDD - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters.

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart JJJJJ - National emission standards for hazardous air pollutants for brick and structural clay products manufacturing.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.
2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.
3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.
4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.
5. Any state-owned or local government-owned facility is exempt from the fee.
6. The fee calculation must be based upon actual annual emissions from the previous calendar year.
7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.
8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.
9. Any source issued a general permit under section 33-15-14-06 is subject to the minor source permit to operate fees under section 33-15-23-03.
10. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the

petitioner's financial status must be submitted with the request to allow the department to evaluate the request.

11. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following receipt of such notice.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

CHAPTER 33-15-25
REGIONAL HAZE REQUIREMENTS

Section

<u>33-15-25-01</u>	<u>Definitions</u>
<u>33-15-25-02</u>	<u>Best Available Retrofit Technology</u>
<u>33-15-25-03</u>	<u>Guidelines for Best Available Retrofit Technology</u> <u>Determinations Under the Regional Haze Rule</u>
<u>33-15-25-04</u>	<u>Monitoring, Recordkeeping, and Reporting</u>

33-15-25-01. Definitions. The definitions in title 40, Code of Federal Regulations, part 51, section 301, as they exist on October 1, 2005, are incorporated by reference into this chapter. For purposes of this chapter only:

1. "Boiler operating day" means any twenty-four-hour period between midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.
2. "Contributes to visibility impairment" means a change in visibility impairment in a class I federal area of five-tenths deciviews or more (twenty-four-hour average) above the average natural visibility baseline. A source exceeds the threshold when the ninety-eighth percentile (eighth highest value) of the modeling results based on any one year of the three years of meteorological data modeled exceeds five-tenths deciviews.

History: Effective January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-02. Best available retrofit technology.

1. **Submission of best available retrofit technology analysis.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, part 51, section 301, that contributes to visibility impairment in a class I federal area shall submit a best available retrofit technology analysis to the department. The analysis shall be submitted within nine months after being notified by the department that the existing stationary facility contributes to visibility impairment.
2. **Installation of best available retrofit technology.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, section 301, which contributes to visibility impairment in a class I federal area shall install and operate best available retrofit technology. The equipment shall be installed and operating as expeditiously as practicable but in no event later than five years after the United States environmental protection agency's

approval of North Dakota's state implementation plan revision for best available retrofit technology.

3. **Operation and maintenance of best available retrofit technology.**
The owner or operator of a facility required to install best available retrofit technology under subsection 1 shall establish procedures to ensure such equipment is properly operated and maintained.

History: Effective January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-03. Guidelines for best available retrofit technology determinations under the regional haze rule. Title 40, Code of Federal Regulations, part 51, appendix y, as published in the federal register on July 6, 2005, is incorporated by reference into this chapter.

The owner or operator of a fossil-fuel-fired steam electric plant with a generating capacity greater than seven hundred fifty megawatts of electricity shall comply with the requirements of appendix y. All other facility owners or operators shall use appendix y as guidance for preparing their best available control retrofit technology determinations.

History: Effective January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-04. Monitoring, recordkeeping, and reporting. The owner or operator of any existing stationary facility that is required to install best available retrofit technology shall conduct monitoring, recordkeeping, and reporting sufficient to show compliance or noncompliance. Monitoring for sulfur dioxide and nitrogen oxides from the main stack of a fossil-fuel-fired steam electric plant shall be conducted using continuous emissions monitoring systems which comply with the requirements of section 33-15-21-09. Particulate monitoring shall be in accordance with the requirements of subsection 10 of section 33-15-14-06. Recordkeeping and reporting shall comply with the requirements of section 33-15-14-06. Monitoring, recordkeeping, and reporting for other source units shall comply with the requirements of section 33-15-14-06.

History: Effective January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

TITLE 45
INSURANCE COMMISSIONER

CHAPTER 45-06-14
SELF-INSURANCE POOLS

Section

<u>45-06-14-01</u>	<u>Definitions</u>
<u>45-06-14-02</u>	<u>Purpose</u>
<u>45-06-14-03</u>	<u>Scope</u>
<u>45-06-14-04</u>	<u>Bylaws</u>
<u>45-06-14-05</u>	<u>Board</u>
<u>45-06-14-06</u>	<u>Application</u>
<u>45-06-14-07</u>	<u>Ending Self-Insurance, Runoff Period, and Plan Dissolution</u>
<u>45-06-14-08</u>	<u>Administration</u>
<u>45-06-14-09</u>	<u>Membership</u>
<u>45-06-14-10</u>	<u>Coverage</u>
<u>45-06-14-11</u>	<u>Premiums, Cashflow, and Dividends</u>
<u>45-06-14-12</u>	<u>Reserves</u>
<u>45-06-14-13</u>	<u>Stop-Loss Insurance</u>
<u>45-06-14-14</u>	<u>Deficit and Assessments</u>
<u>45-06-14-15</u>	<u>Financial Integrity</u>
<u>45-06-14-16</u>	<u>Reporting</u>

45-06-14-01. Definitions.

1. "Board" means a pool's board of trustees.
2. "Bylaws" means the statements and organizational documents adopted by a pool that prescribe its purpose, government, and administration.
3. "Commissioner" means the insurance commissioner.
4. "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.
5. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that

the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

6. "Days" means calendar days.
7. "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.
8. "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.
9. "Fund year" means a pool's twelve-month fiscal year.
10. "Member" means a public school district, a political subdivision, or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.
11. "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more groups for coverage of each group's employee health benefits and disability benefits. Actions of a pool include actions by the pool's designated agents.
12. "Premium" means the amount charged by the pool for health coverage. "Premium" does not include assessments or penalties.
13. "Runoff pool" means a pool that no longer has authority to self-insure but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.
14. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.
15. "Service company" means an entity licensed under North Dakota Century Code chapter 26.1-27 as an administrator or an entity licensed under North Dakota Century Code title 26.1 as an insurance company, health maintenance organization, or nonprofit health service corporation.
16. "Sponsoring association" means a group that sponsors or organizes a pool.
17. "Surplus" means a pool's total assets minus total liabilities. "Surplus" includes paid-in capital and retained earnings. The amount of a pool's

surplus is determined according to the instructions provided for a pool's financial statements.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-02. Purpose. This chapter governs the formation, operation, and dissolution of an employee health benefit pool. The provisions are intended to ensure the financial integrity and the competent and equitable administration of the pool.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-03. Scope. The following are subject to the requirements of this chapter:

1. A group that organizes an employee health benefit pool;
2. A group that forms, joins, or leaves an employee health benefit pool; and
3. A service company that provides services to an employee health benefit pool.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-04. Bylaws.

1. **Content.** Bylaws may contain any provision that does not conflict with this chapter. Bylaws must, at a minimum, contain the following provisions:
 - a. The employee health benefit pool's name, purpose, fiscal year, and initial date of existence;
 - b. Definitions of key terms;
 - c. A statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;
 - d. The number, term of office, and method of selection and replacement of the members of the board;

- e. The procedure for calling board meetings;
 - f. The method of periodic selection and review of the service company and financial administrator;
 - g. The procedure for amending the bylaws;
 - h. The procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;
 - i. The criteria for membership in the pool, including standards of financial integrity and loss experience;
 - j. The procedure for admitting new members to the pool;
 - k. The criteria for expelling members from the pool for reasons including nonpayment of premiums;
 - l. The procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;
 - m. A statement of the coverages to be provided by the pool;
 - n. The procedure for including and excluding a member's participation in a particular coverage;
 - o. The proposed initial premium payments by members and, if applicable, by the members' employees;
 - p. The procedure for changing premium rates;
 - q. The procedure for levying and collecting an assessment;
 - r. A statement identifying those with access to pool funds and the purposes for which pool funds may be spent;
 - s. The procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and
 - t. The procedure for distributing any assets remaining upon the pool's dissolution.
2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. The

pool must file bylaws changes with the commissioner within thirty days after adoption.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-05. Board.

1. **Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

2. **Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or this chapter are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:
 - a. Exercise fiduciary responsibility for the pool's operation and financial condition;
 - b. Select, supervise, and evaluate the service company, financial administrator, accountant, insurer, and any other contractors;
 - c. On the basis of the pool's overall financial condition, authorize changes in premium, reserve, or investment practices and declare assessments or dividends as appropriate;
 - d. Approve all reports concerning the pool's operations and status and oversee filing of reports with the commissioner;
 - e. Monitor delinquent premiums, loss experience, and the financial condition of individual members and authorize disciplinary action or expulsion as appropriate;
 - f. Accept or reject applications for membership;

- g. As permitted by the bylaws, make or recommend changes to the bylaws for the improvement of the pool's operation and financial integrity; and
- h. Monitor the pool's compliance with all statutes and rules governing its operation.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-06. Application.

1. **Initial application.** Two or more groups may apply to the commissioner for authority to form a self-insurance pool. Applications must be submitted on forms prescribed by the commissioner and must include a proposed business plan. The appropriate filing fee must accompany the application. An application must be submitted no later than sixty days prior to the requested date for authority to self-insure. An incomplete application must be returned to the applicant. An application not returned to the applicant within fourteen days of receipt must be acted upon within sixty days of receipt.
2. **Renewal.** Authority to operate as an existing pool will automatically renew annually with the filing of the pool's annual report to the commissioner and the payment of the appropriate fee, subject to the pool maintaining its financial ability to pay claims and expenses.
3. **Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications must be filed with the commissioner and are subject to the same requirements as prospective new pools.
4. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue a certificate authorizing the proposed self-insurance pool. The initial certificate for a new pool is effective until revoked by the commissioner. Approval of an application for authority to self-insure must be granted if the proposed pool conforms with all requirements of this chapter.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-07. Ending self-insurance, runoff period, and plan dissolution.

1. **Termination.** A pool may terminate its self-insurance authority and cease to provide coverage effective at the end of a fund year. The

pool must notify the commissioner within fourteen days of its decision to terminate. A pool may not terminate its self-insurance authority less than forty-five days prior to the end of the fund year in question. The voluntary termination of self-insurance authority does not constitute pool dissolution under subsection 4.

2. **Revocation.** The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner determines that the conditions are material:
 - a. Failure of the pool to comply with this chapter or with other applicable North Dakota laws or rules;
 - b. Failure of the pool to comply with any lawful order of the commissioner;
 - c. Commission by the pool of a prohibited practice as defined by North Dakota Century Code chapter 26.1-04 or in related rules; or
 - d. A deterioration of the pool's financial integrity to the extent that its present or future ability to meet its obligations is or will be significantly impaired.
3. **Runoff pool.** A pool must continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period during which the pool provided coverage. A runoff pool must continue to comply with this chapter and with other applicable North Dakota laws and rules.
4. **Dissolution.** A pool, including a runoff pool, must apply to the commissioner for authorization to dissolve. An application must be approved or disapproved within sixty days of receipt. Dissolution without authorization is prohibited and void and does not absolve a pool or runoff pool from fulfilling its continuing obligations and does not absolve its members from assessments under subsection 3 of section 45-06-14-14. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions is met:
 - a. The pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or
 - b. The pool has obtained an irrevocable commitment from a licensed insurer to pay all outstanding liabilities and to provide all related services, including the payment of claims, preparation of reports,

and the administration of transactions associated with the period during which the pool provided coverage.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-08. Administration.

1. **Service company.** A pool must contract with a service company for services necessary to conduct the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages provided by the pool. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include:
 - a. Accounting and recordkeeping;
 - b. Billing and collection of premiums and assessments;
 - c. Claims investigation, settlement, and reserving;
 - d. Claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;
 - e. General administration;
 - f. Loss control, safety programs, or both; and
 - g. Underwriting.
2. **Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. A staff member of the financial administrator may not be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.
3. **Recordkeeping.** A pool must maintain within North Dakota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under section 45-06-14-16. The commissioner may examine the pool's records in order to verify the pool's compliance with this chapter and with other statutes and rules. The provisions of North Dakota Century Code chapter 26.1-03 apply to the commissioner's examination. All records concerning claims,

reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-09. Membership.

1. **Availability.** A pool must establish nondiscriminatory criteria for membership. A pool may reject applicants or dispel members that do not meet the pool's underwriting standards.
2. **Joining.** A new member must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective until the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and this chapter, including joint and several liability for the pool's obligations. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the commissioner, may order that an assessment be levied against the members if necessary to maintain the pool's sound financial condition.
3. **Public and private pool membership.** Only North Dakota domiciled employers whose primary places of employment are within North Dakota are eligible for membership in a pool. As a condition of a private employer's membership in a pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in subsection 1 of section 45-06-14-14. The bond must provide a penalty amount no less than:
 - a. The greatest one-year premium paid by the member for the coverage through the pool during the past three years;
 - b. If the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or
 - c. If the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.
4. **Withdrawal.** The membership agreement must include the procedures for withdrawing from the pool. A member must notify the pool of its desire to withdraw not less than thirty days before the date upon which

it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under subsection 2 of section 45-06-14-11. Withdrawal is prohibited and void unless:

- a. The member has belonged to the pool continuously for the period required by the bylaws, which shall provide for a minimum of one complete fund year.
 - b. All outstanding premiums and assessments owed by the member have been paid.
5. **Expulsion.** At least annually a pool must review the status and experience of each member relative to the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:
- a. A member may be expelled with outstanding premiums or assessments owing; and
 - b. A member may be expelled notwithstanding that the minimum term of membership has not been satisfied.
6. **Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to terminate the pool, no member may join, leave, or be expelled from the pool.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-10. Coverage.

1. **Coverage.** A pool must provide coverage as authorized by the board.
2. **Uniform underwriting.** A pool must offer its coverages subject to the same underwriting standards to all members and, if applicable, to all members' employees.
3. **Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or termination or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage

was in force. This responsibility ceases only after a pool dissolves under subsection 4 of section 45-06-14-07.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-11. Premiums, cashflow, and dividends.

1. **Minimum annual premium.** A pool must have and maintain an annual premium volume of no less than three hundred thousand dollars. A pool or prospective pool may apply to the commissioner for a reduction of the minimum annual premium requirement, stating the amount of reduction and the reasons supporting the request. The commissioner must act on the application within sixty days after receipt. The pool must demonstrate that the lesser premium volume would not compromise its financial integrity and stability.

2. **Monitoring premium volume.** A pool must monitor its premium volume. If annual premium is more than three hundred thousand dollars but less than four hundred thousand dollars, or less than one hundred thirty-three percent of the amount approved pursuant to subsection 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds four hundred thousand dollars. "Annualized premium volume" means the gross premiums written for the previous twelve months. If premium decreases to an annualized volume of less than three hundred thousand dollars, or a lesser amount if approved pursuant to subsection 1, the pool must notify the commissioner:
 - a. Of its intent to end its self-insurance authority; or
 - b. Of its proposal for restoring compliance with subsection 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subsection 1 within ninety days, or if after ninety days the pool continues to be out of compliance, the commissioner may revoke the pool's self-insurance authority.

3. **Surplus or stop-loss advancement.** To maintain its financial integrity, a pool must either:
 - a. Establish and maintain a surplus consisting of funds contributed by members and the pool's retained earnings sufficient to pay claims as they occur; or
 - b. Negotiate a stop-loss insurance policy requiring the insurer to advance funds to the pool if the pool's policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

4. **New pool deposit premium.** As a condition for authorization to self-insure, a prospective pool must submit evidence that an initial premium payment has been made.
 - a. The initial premium payment must be no less than twenty-five percent of the combined initial members' first-year premium. If the initial payment is less than one hundred percent of the initial members' first-year premium, the remainder of the initial members' first-year premium must be paid in six or more equal installments at equal intervals throughout the year.
 - b. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the reasons supporting the request. The commissioner may approve the applications within sixty days after receipt if the pool has demonstrated that the proposed payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner may consider arrangements the pool has made under subsection 3 in evaluating the application.
5. **Premium payments.** A pool must promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.
6. **Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:
 - a. The dividend will not impair the pool's surplus; and
 - b. The pool does not have an outstanding loan or an outstanding advancement from a stop-loss carrier.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-12. Reserves. A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively and adjusted as new information becomes available. Accounting for reserves must be as required by the financial statement forms and instructions under subsection 2 of section 45-06-14-16.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-13. Stop-loss insurance.

1. **Purchase.** A pool may purchase stop-loss insurance to cover a portion of its losses. If a stop-loss insurance policy is terminated or modified causing a violation of subsection 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification. The pool must inform the commissioner of corrective action that will be taken to maintain the pool's financial integrity.
2. **Required stop-loss coverage.** A pool may not retain liability on any one incident of more than ten percent of its annual premium volume during the most recent fund year, plus twenty percent of its surplus. A pool with less than one year's experience must use the pool's estimated premium volume during the first full fund year. The pool must purchase stop-loss insurance for liability exposure. The stop-loss carrier must be licensed to do business in North Dakota. A pool's self-insured retention per person per year may not exceed fifty thousand dollars.
3. **Return of liability.** Liability transferred to an insurer under subsection 2 may not be directly or indirectly returned to a pool or a member.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-14. Deficit and assessments.

1. Each current member of a pool is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool for three complete fund years after leaving the pool. After the period of continuing liability, a past member is no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subsection 2.
2. Runoff liability. If a pool's self-insurance authority is ended under subsection 1 or 2 of section 45-06-14-07, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:
 - a. All members at the termination of self-insurance authority are jointly and severally liable for all pool liabilities and expenses until the pool is dissolved; and
 - b. All past members that were jointly and severally liable under subsection 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.
3. Deficits. If at any time a pool's total liabilities exceed its total assets, the board must restore a positive surplus and must do so within ninety

days. A deficit may be corrected using one or more of the types of assessments set forth below. A pool may elect to assess some but not all jointly and severally liable members and past members. The method of assessment may not arbitrarily exclude members or past members, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may identify methods of assessment. If the board fails to do so when required, the commissioner must order an assessment to correct a deficit using the procedure described in subdivision a.

- a. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under subsection 1 or 2 of section 45-06-14-07 is the basis of assessments until final pool dissolution. The assessment base period includes all completed quarters of the current fund year and the most recent three complete fund years.
 - b. Jointly and severally liable members and past members may be assessed, whereby members and past members are assessed in proportion to the member's loss experience over the assessment base period if provided for in the bylaws.
 - c. Jointly and severally liable members and past members may be assessed, whereby current members pay more than past members if provided for in the bylaws.
 - d. Jointly and severally liable members and past members may be assessed whereby members belonging to the pool in poor loss years are assessed more than members belonging to the pool in better loss years if provided for in the bylaws.
 - e. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of subdivisions a to d, if the formula is consistent with the provisions of this section.
4. Assessment to increase surplus. The board may assess current members in order to increase the surplus. The assessment may be made at any time in the discretion of the board to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure consistent with the pool's bylaws.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-15. Financial integrity.

1. **Fidelity bond.** All contractors and individuals who handle pool funds or who will have access to pool funds, including board members, must be covered by a fidelity bond providing standard fidelity coverage, including coverage against dishonesty, theft, forgery, alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be at least three hundred thousand dollars. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

2. **Integrity of assets.** A pool's assets may not be:
 - a. Commingled with the assets of any member;
 - b. Loaned to anyone for any purpose or used as security for a loan, except as permitted under subsection 5 for investments;
 - c. Employed for any purpose other than for the purposes stated in the bylaws and in compliance with this chapter and related statutes; or
 - d. Considered the property or right of any member or covered person, except:
 - (1) For benefits under the coverage documents;
 - (2) For dividends declared in accordance with subsection 5 of section 45-06-14-11; and
 - (3) For a portion of the assets remaining after the plan's dissolution, in accordance with subsection 4 of section 45-06-14-07.

3. **Sources and uses of funds.** A pool may expend funds for payment of losses and expenses and for other costs similar to those incurred by insurers under conventional insurance policies in North Dakota. Except as provided in subdivision b of subsection 3 of section 45-06-14-11, a pool may not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool may not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:
 - a. Its members as premiums, assessments, or penalties;
 - b. Its insurers or indemnitors pursuant to insurance or indemnification agreements;
 - c. Dividends, interest, or the proceeds of sale of investments;

- d. Refunds of excess payments;
 - e. Coordination of benefits with other insurance or group self-insurance coverages; or
 - f. Collection of money owed to the pool.
4. **Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in a special account may not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established.
5. **Investments.** A pool's investments are subject to North Dakota Century Code chapter 26.1-05, as regards both permitted and prohibited investments, maturities, and depositories. In addition, a pool may not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate, or any person or entity under contract with the pool.
6. **Monitoring financial condition.** The board must monitor the pool's revenues, expenses, and losses and evaluate its current and expected financial condition. The board must maintain the pool's sound financial condition at all times. The board may adjust premium rates, underwriting standards, dividend rates, expulsion standards, and invoke other powers granted in this chapter and the bylaws. If the commissioner determines that the board's actions are inadequate to maintain the pool's sound financial condition, the commissioner may order an increase in the premium rates, revoke the pool's self-insurance authority, order that an assessment be levied against the members, or take other appropriate action.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

45-06-14-16. Reporting.

1. **Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than March first of each year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than one hundred eighty days after the end of the pool's fund year. The first annual financial statement and every

second annual financial statement thereafter must be accompanied by a statement from a qualified actuary. The actuary's statement and the scope of the actuarial review must be according to requirements prescribed by the commissioner.

2. **Quarterly reports.** If the commissioner determines that a pool's financial integrity is such that the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner may require that the pool file quarterly reports with the commissioner no later than thirty days after the end of the first, second, and third quarters of each fund year. The commissioner may remove the requirement to file quarterly reports when the pool's financial integrity is restored. A quarterly report must contain statements of the pool's:

- a. Current total cash on hand and on deposit, and total investment;
- b. Current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;
- c. Dividends declared and dividends paid during the quarter;
- d. Gross premiums written during the quarter;
- e. Losses paid during the quarter;
- f. Current total members; and
- g. Any other information that the commissioner requests.

3. **Extraordinary audits.** As necessary, the commissioner may require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports and to report its findings. The commissioner may require that a pool hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner may require changes in the pool's reserving, accounting, or recordkeeping practices. The audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under North Dakota Century Code chapter 26.1-03. The commissioner may investigate:

- a. Losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;
- b. Unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

- c. Other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.
4. Annual status report. On or before March first of each year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner. The commissioner may inquire into the condition of the pool as allowed in North Dakota Century Code section 26.1-02-03.
5. Penalty. The financial statements and status report required under subsections 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by this chapter and related statutes are subject to North Dakota Century Code chapter 26.1-03, as applicable to licensed insurance companies for comparable filings.

History: Effective January 1, 2007.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4

TITLE 48
STATE BOARD OF ANIMAL HEALTH

ARTICLE 48-12

NONTRADITIONAL LIVESTOCK

Chapter	
48-12-01	Nontraditional Livestock [Repealed]
48-12-01.1	Nontraditional Livestock
48-12-02	Primates, Wolves, and Wolf Hybrids [Repealed]
48-12-02.1	Category 3 Species

**CHAPTER 48-12-01
NONTRADITIONAL LIVESTOCK**

[Repealed effective January 1, 2007]

CHAPTER 48-12-01.1
NONTRADITIONAL LIVESTOCK

<u>Section</u>	
<u>48-12-01.1-01</u>	<u>Definitions</u>
<u>48-12-01.1-02</u>	<u>Categories of Nontraditional Livestock</u>
<u>48-12-01.1-03</u>	<u>Penalties</u>
<u>48-12-01.1-04</u>	<u>Importation Requirements for Category 2 and Category 3 Species</u>
<u>48-12-01.1-05</u>	<u>Importation Permits Required - Denial - Exemption</u>
<u>48-12-01.1-06</u>	<u>Intrastate Movement Requirements</u>
<u>48-12-01.1-07</u>	<u>License Requirements for Category 2 and Category 3 Species</u>
<u>48-12-01.1-08</u>	<u>Chronic Wasting Disease</u>
<u>48-12-01.1-09</u>	<u>Fencing Requirements</u>
<u>48-12-01.1-10</u>	<u>Housing and Handling Facility Requirements</u>
<u>48-12-01.1-11</u>	<u>Escaped Nontraditional Livestock</u>
<u>48-12-01.1-12</u>	<u>Identification Requirements</u>
<u>48-12-01.1-13</u>	<u>Waivers and Exemptions</u>
<u>48-12-01.1-14</u>	<u>Zoos</u>
<u>48-12-01.1-15</u>	<u>Auction Sales</u>

48-12-01.1-01. Definitions. For purposes of this article:

1. "Board" means the state board of animal health.
2. "Confinement" means any structure or other means intended to keep an animal within bounds or restrict its movement.
3. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, farmed elk, llama, alpaca, or swine.
4. "Environmentally dangerous animal" means animals that are known to cause exceptionally serious depredation to the environment.
5. "Herd" means any group of livestock maintained on common ground, or two or more groups of livestock under common ownership or supervision that are geographically separated from other herds but can have an interchange or movement without regard to health status, as determined by the state veterinarian.
6. "Hybrid" means an animal produced by interbreeding different species or subspecies.
7. "Importation permit" means authorization obtained from the board for the importation of animals into North Dakota.
8. "Inherently dangerous animal" means any animal that is intrinsically dangerous by nature and poses life-threatening risks.

9. "License" means a document obtained from the board and issued to a person for the maintenance of a category 2 or category 3 species in North Dakota.
10. "Maintain" means to own, possess, control, restrain, or keep in captivity.
11. "Nontraditional livestock" means any wildlife held in confinement or an animal that is physically altered to limit movement and facilitate capture. Nontraditional livestock also includes ova, semen, eggs, or embryos of such livestock.
12. "Nontraditional livestock auction permit" is a document that may be issued by the board for organized auctions or sales of category 2 or category 3 nontraditional livestock.
13. "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.
14. "Primates" means nonhuman primates.
15. "Protected species" means all wild varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sage hens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, crows, white-tailed deer, mule deer, moose, elk, bighorn sheep, mountain goats, antelope (pronghorn), mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, red or gray foxes, and tree squirrels.
16. "Restricted species" means those species, hybrids, eggs, or embryos found by the board to be detrimental to existing animals and their habitat through parasites, disease, habitat degradation, or competition.
17. "Special license" means a license that is obtained from and approved by the board for a category 3 species, requiring individual application.
18. "Species category list" is a listing of species previously reviewed and currently categorized by the board. This list is available from the state veterinarian's office.
19. "Venomous reptile" means a reptile that is normally considered a venomous or poisonous species where found in its native habitat and that can inflict serious bodily injury or death upon a human being, regardless of whether an individual animal has been de venomized.
20. "Wildlife" means any member of the animal kingdom, including any mammal, fish, bird, (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or

other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals or birds or animals held in private ownership.

21. "Wolf" means any animal of the species canis lupis.
22. "Wolf-hybrid" means any animal that is any part wolf.
23. "Zone 1" is that area bordered by a line that begins at the junction of the Montana border and Missouri River, runs east along the Missouri River to highway 49, south to highway 21, west to highway 22 to the Slope-Bowman county line, and west to Montana.
24. "Zone 2" is that area bordered by a line that begins at the Minnesota state line on highway 2, runs west to Towner and north along the Souris River to the Canadian border.
25. "Zoo" means an organization with a class C exhibitor's license which follows United States department of agriculture regulations and is inspected by the United States department of agriculture animal and plant health inspection service.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-02. Categories of nontraditional livestock.

1. Category 1 are those species generally considered domestic, or other species that are not inherently dangerous, that do not pose a health risk to humans, domestic, or wild species, and do not pose a hazard to the environment as determined by the board. Category 1 includes turkeys, geese, and ducks morphologically distinguishable from wild turkeys, geese, ducks, pigeons, mules, donkeys, asses, ratites, chinchilla, Guinea fowl, ferrets, ranch foxes, ranch mink, peafowl, all pheasants, quail, chukar, hedgehog, and degus. Category 1 species do not require nontraditional livestock licensure but must otherwise comply with these rules.
2. Category 2 are certain protected species or those species that may pose health risks to humans or animals or may be environmentally hazardous as determined by the board. Category 2 includes all nondomestic ungulates, including all deer (cervidae) and pronghorn, nondomestic cats not listed in category 3, waterfowl, shorebirds, upland game birds not listed in category 1, crows, wolverines, otters, martens, fishers, kit or swift foxes, badgers, coyotes, mink, red and gray fox, muskrats, beavers, weasels, opossums, prairie dogs, and other ground squirrels. Owners of category 2 species must maintain nontraditional livestock licensure.

3. Category 3 are those species determined by the board to pose special concerns, including species which are inherently dangerous or environmentally hazardous. Owners of category 3 species must maintain nontraditional livestock licensure and are subject to additional housing and care requirements. Category 3 includes the following species and their hybrids:
 - a. All wild species of the family suidae except swine considered domestic in North Dakota by the board of animal health.
 - b. Big cats, including mountain lion, jaguar, leopard, lion, tiger, and cheetah.
 - c. Bears.
 - d. Wolves and wolf-hybrids.
 - e. Venomous reptiles.
 - f. Primates.
 - g. Nondomestic sheep and hybrids and nondomestic goats and hybrids.

4. Exempt animals. Farmed elk are exempt because they are regulated as domestic animals under North Dakota Century Code section 36-01-00.1 and regulated pursuant to North Dakota Century Code chapter 36-25. Unless the state veterinarian determines it is necessary based on disease incidence information or human health or safety concerns, the following are exempt from the importation permit and certificate of veterinary inspection requirement:
 - a. Arachnids.
 - b. Amphibians.
 - c. Invertebrates.
 - d. Nonvenomous reptiles.
 - e. Tropical freshwater and saltwater fish.
 - f. Gerbils.
 - g. Guinea pigs.
 - h. Hamsters.

- i. Mice.
 - j. Rats.
 - k. Rabbits.
 - l. Sugar gliders.
5. Prohibited animals.
- a. Ownership of raccoons and skunks is prohibited. A person may not keep a skunk or raccoon in captivity. This does not apply to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture. Any animal kept in violation must be confiscated and disposed of.
 - b. The board may prohibit ownership of any animal deemed to be a significant threat to human or animal health in North Dakota.
6. Animals not referred to in this section must be reviewed by the state board of animal health.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-03. Penalties.

- 1. The board may order any nontraditional livestock brought into this state which is not in compliance to be returned to the state of origin, or in the alternative, the board may order the animals slaughtered or destroyed.
- 2. If, after a hearing, the board finds that a person has brought, kept, or received any nontraditional livestock in this state and the livestock are not in compliance with the rules, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
- 3. Any person who knowingly violates any rule of the board is guilty of an infraction.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-04. Importation requirements for category 2 and category 3 species.

1. No person may import any nontraditional livestock without first obtaining an importation permit, when required by this chapter, from the office of the state veterinarian.
2. The state veterinarian may deny the importation of animals that are infected with, recently exposed to, or suspected of being infected with or recently exposed to any infectious or transmissible disease, or that originate from a quarantined area.
3. An animal may not be imported, without approval from the board, if the animal originated in a herd that has been quarantined for a reportable disease or was under other state or federal regulatory action for a disease-related matter.
4. Any imported animal must be accompanied by an approved certificate of veterinary inspection confirming a physical examination by a licensed, accredited veterinarian of the animals to be imported.
5. Red deer and red deer hybrids will not be allowed in zone 1 or zone 2.
6. Minimum specific disease test results and health statements that must be included on a certificate of veterinary inspection include:
 - a. Tuberculosis requirements for states with tuberculosis-modified accredited cervid status:
 - (1) Cervids that are moved directly to slaughter at an approved slaughtering establishment must be identified with an official form of identification and be accompanied by a certificate of veterinary inspection. A tuberculosis test is not required.
 - (2) Cervids from a herd with a current accredited-free cervid status for tuberculosis may be moved to any licensed nontraditional livestock facility provided they meet the following requirements:
 - (a) They are officially identified.
 - (b) They are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within twenty-four or thirty-six months, prior to the movement.
 - (c) All cervids, except animals nursing negative dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official

test for bovine tuberculosis within ninety days of movement or consignment.

(3) Cervids from a cervid tuberculosis-qualified herd may be moved to any licensed nontraditional livestock facility provided they meet the following requirements:

(a) They are officially identified.

(b) They are accompanied by a certificate stating that all animals in the movement, except animals nursing negative dams, were negative to an official test for bovine tuberculosis conducted within six months prior to the movement.

(c) All cervids, except animals nursing negative dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official test for bovine tuberculosis within ninety days of movement or consignment.

(4) Cervids from a cervid tuberculosis-monitored herd may be moved to any licensed nontraditional livestock facility provided they meet the following requirements:

(a) They are officially identified.

(b) They are accompanied by a certificate stating that all animals in the movement, except animals nursing negative dams, were negative to an official tests for bovine tuberculosis conducted within ninety days prior to the movement.

(5) Cervids from herds of unknown cervid tuberculosis status may be moved to any licensed nontraditional livestock facility provided they meet the following requirements:

(a) They are officially identified.

(b) They are accompanied by a certificate stating that all animals in the movement, except animals nursing negative dams, were negative to two official tests for bovine tuberculosis. The required test must be conducted not less than ninety days apart and with the second test conducted within ninety days of the movement.

(c) All cervids, except animals nursing negative dams, in a consignment that is being moved from a herd located

in a state or zone lacking accredited-free status for bovine tuberculosis must be from a herd that has had a negative official test for bovine tuberculosis within twelve months prior to the movement. All farmed cervids in the movement, except animals nursing negative dams, must be negative to a second official test for bovine tuberculosis conducted within ninety days prior to the movement unless the herd of origin herd test was conducted within ninety days prior to the movement.

- b. Tuberculosis requirements for states without tuberculosis-modified accredited cervid status may be subject to additional import requirements at the discretion of the state veterinarian.
- c. Tuberculosis requirements for all other species. Testing requirements will be determined on a species-by-species basis by the state veterinarian.
- d. Brucellosis requirements are as follows:
 - (1) Reindeer (rangifer):
 - (a) For certified brucellosis-free cervid herds, no movement testing is required.
 - (b) For brucellosis-monitored cervid herds, all sexually intact animals six months of age or older must test negative for brucellosis by four different official tests as specified by the state veterinarian within ninety days prior to importation.
 - (2) All other cervidae:
 - (a) For certified brucellosis-free cervid herds, no movement testing is required.
 - (b) For brucellosis-monitored cervid herds, all sexually intact animals six months of age or older must test negative for brucellosis by two different official tests within ninety days prior to importation.
 - (c) All sexually intact animals six months of age or older must test negative for brucellosis by two official brucellosis tests within thirty days prior to importation.
 - (3) For all other species, testing requirements will be determined on a species-by-species basis by the state veterinarian.

e. Chronic wasting disease requirements:

(1) White-tailed deer, mule deer, and red deer must pass a satisfactory risk assessment for chronic wasting disease, conducted by the state veterinarian's office. Persons seeking an importation permit for these species must be notified of the decision by the state veterinarian's office within ten days of submitting the chronic wasting disease risk assessment form. Animals must be shipped within thirty days of approval. After thirty days, a new risk assessment must be submitted and approved prior to shipment.

(2) The following statement must be verified on the certificate of veterinary inspection for white-tailed deer, mule deer, and red deer by the herd veterinarian:

These animals and the herd they originate from have no history of emaciation, depression, excessive salivation or thirst, or neurological disease. In the event of these symptoms, appropriate diagnostic measures were taken to rule out a transmissible spongiform encephalopathy. These animals have not been exposed to an elk or deer diagnosed positive for a transmissible spongiform encephalopathy.

(3) No white-tailed deer, mule deer, or red deer may be imported from a herd where chronic wasting disease has been diagnosed or a herd that has had chronic wasting disease traced to it unless that herd has undergone sixty months of surveillance after the last case of chronic wasting disease. The surveillance must meet the standards set by the state veterinarian.

f. Equine infectious anemia. All equidae must have a negative serologic test for equine infectious anemia approved by the state veterinarian within twelve months prior to entry into North Dakota.

g. Rabies. With respect to captive-bred animals of the order carnivora, vaccination is required for species for which there is a USDA-approved vaccine. For species for which there is no USDA-approved vaccination, the following statement must be included on the certificate of veterinary inspection: "The animals on the premises of origin have been free from symptoms of rabies for the past 12 months." Carnivores taken from the wild in other states may not enter the state if rabies has been diagnosed in the past twelve months in the same species in the state of origin. The animals may not come from an area that is quarantined for rabies, unless approved by the North Dakota state veterinarian.

- h. Johne's disease. For all ruminants, the following statement must be included on the certificate of veterinary inspection, signed by a licensed, accredited veterinarian in the state or province of origin:

To the best of my knowledge, animals listed herein are not infected with paratuberculosis (Johne's disease) and have not been exposed to animals infected with paratuberculosis.

- i. Diseases of birds:

- (1) Pullorum and fowl typhoid (galliformes):

(a) Galliformes, including prairie chicken (tympanuchus cupido), quail, pheasants (phasianus colchicus), chukar (alectoris chukar), gray (Hungarian) partridge (perdix perdix), and wild turkey (meleagris gallopavo), including eggs and hatchlings unless going directly to slaughter, must originate from a producer who is participating in the pullorum fowl typhoid control phase of the national poultry improvement plan:

(b) The birds must be tested serologically negative for pullorum and fowl typhoid within the past ninety days. Serum testing or national poultry improvement plan active status is required for birds of the order galliformes; or

(c) In lieu of pullorum and fowl typhoid testing of other galliformes, the following statement may be included on the certificate of veterinary inspection:

To my knowledge, birds listed herein are not infected with pullorum or fowl typhoid and have not been exposed to birds infected with pullorum or fowl typhoid during the past twelve months.

This statement must be signed by the veterinarian and the owner or the owner's representative.

- (2) Exotic Newcastle disease (viscerotropic, velogenic viruses) psittacosis (Psittacines). The following statement, which applies to all psittacine birds entering the state, must be included on the certificate of veterinary inspection:

To my knowledge, birds listed herein are not infected with exotic Newcastle disease or psittacosis and have not been exposed to birds

known to be infected with exotic Newcastle disease or psittacosis within the past 30 days.

This statement must be signed by the veterinarian and the owner or the owner's representative.

- (3) Mycoplasmosis. All wild turkeys, including eggs and hatchlings of the species meleagris gallopavo, unless going directly to slaughter, must:
- (a) Originate from a producer who is participating in the mycoplasmosis control phase of the national poultry improvement plan; or
 - (b) The birds must have been tested serologically negative for mycoplasma gallisepticum and M. synoviae within the past thirty days.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-05. Importation permits required - Denial - Exemption.

1. Except as provided in this chapter, no person may import any nontraditional livestock without first obtaining an import permit from the office of the state veterinarian.
2. The import permit number must be written on the certificate of veterinary inspection, unless the nontraditional livestock are being imported without a certificate of veterinary inspection for immediate slaughter pursuant to North Dakota Century Code section 36-14-10.
3. Import permits expire ten days after the issuance and are not transferable.
4. Upon a determination that the import permit applicant or permittee is or has been in violation of the requirements of the subject permit or that the applicant has provided inaccurate information with respect to the permit request, the state veterinarian may deny permits issued pursuant to these rules.
5. The state veterinarian may deny an import permit if the state veterinarian has information that an animal:
 - a. Has not met the disease testing, vaccination, and identification requirements set forth in North Dakota Century Code title 36 or this chapter, or as otherwise required by the state veterinarian.

- b. Has not met or satisfied preentry quarantine conditions imposed by law.
- c. Is or may be infected with a contagious or infectious disease.
- d. Has been exposed or may have been exposed to a contagious or infectious disease.
- e. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to a contagious or infectious disease.
- f. May be a threat to the health and well-being of the human or animal population of the state, or both.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-06. Intrastate movement requirements.

- 1. Red deer and red deer hybrids will not be allowed in zone 1 or zone 2.
- 2. Special permission must be obtained from the board to possess nondomestic sheep and hybrids or nondomestic goats and hybrids south and west of the Missouri River.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-07. License requirements for category 2 and category 3 species.

- 1. The owner must obtain a license from the board prior to acquiring the livestock. Fees must be paid under North Dakota Century Code section 36-01-08.1 prior to issuance of a license.
- 2. Upon initial application, inspection of premises and facilities to meet board guidelines will be conducted by a game and fish department representative, licensed veterinarians, or individuals approved by the board and subsequent inspections as deemed necessary by the board.
- 3. An owner of nontraditional livestock must allow inspection of inventory and health records, holding facilities, and licensed nontraditional livestock by the board or its agent during the term of the license and during normal working hours. The licensee or the licensee's agent must accompany the person conducting the inspection.

4. Additional disease testing may be required by the board prior to importation or sale if there is reason to believe other diseases, parasites, or health risks are present.
5. All category 2 or category 3 nontraditional livestock owners must provide a description of the premises and facilities and a sketch or map of the facilities. The sketch or map must include the proposed exterior boundary, location of the holding and handling facilities, the quarantine area, and the proposed location of all gates at the time of application for a nontraditional livestock license. The board may require additional information.
6. Category 2 and category 3 species may not be maintained, released, imported, transported, sold, bartered, or traded within the state except as authorized.
7. Reclassification of any species is contingent upon scientific information indicating the risks posed by these species to native wildlife populations and domestic livestock and must be reviewed by the board.
8. Any animal determined by the board to pose a significant threat to the state's wildlife resources, domestic animals, or human health must be held in quarantine at the owner's expense until disposition is determined by the board.
9. Licenses expire on January thirty-first of each year, and failure to renew a nontraditional livestock license within ninety days requires the owner to dispose of livestock as specified by the board.
10. Inventory reports are due on January thirty-first of each year. Failure to file an inventory report by its due date is cause for revocation of the license. When an annual inventory report is received, the board may evaluate the existing holding facility to determine if it is adequate to contain the number and type of nontraditional livestock for which applied and the purpose for which they will be held.
 - a. Annual inventory reports must be recorded on the forms provided by the board and must be filled out completely and accurately.
 - b. Total purchases, sales, deaths, releases or other animal transfers, and births must be reported on the annual inventory reports. Increases by birth for the year must be reported on the annual inventory report.
 - c. Any livestock transferred, bought, or sold must include an itemized bill of sale, a certificate of veterinary inspection, or a manifest at transfer of ownership that must include individual identification if applicable, species, age, sex, number of animals, buyer and seller and their respective addresses, date of sale, and available

nontraditional livestock license numbers. All manifests and bills of sale must be submitted to the board within two weeks of the occurrence.

11. No owner of category 2 or category 3 nontraditional livestock may, without prior written approval from the board, release or abandon livestock. Game bird releases must be stipulated in the license application.
12. Upon expiration or revocation of a license, all formerly licensed nontraditional livestock in possession must be disposed of by the licensee as directed by the board. No formerly licensed nontraditional livestock may be abandoned, released, or removed from the holding facility without prior written approval of the board. All formerly licensed nontraditional livestock remaining at the holding facility upon a reasonable period after expiration or revocation of the license may be disposed of by the board.
13. The board may revoke any license or deny any license application and may dispose of any nontraditional livestock imported or transported for failing to comply with these rules or with conditions placed on the license at the time of issuance. The board may revoke any license or deny any license application if the applicant, or agent, falsified information on the license application or on the certificate of veterinary inspection, or falsified or failed to keep or submit records as required by this chapter. The revocation of a license or denial of a license application must comply with North Dakota Century Code chapter 28-32.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-08. Chronic wasting disease. The owner of any white-tailed deer, mule deer, or moose twelve months of age and older which die for any reason must submit the appropriate tissue to an approved laboratory for chronic wasting disease surveillance. Official identification must accompany the sample to the laboratory. The state veterinarian may grant exemptions to this surveillance under extenuating circumstances. A chronic wasting disease diagnosis will be based on postmortem brain testing confirmed by the national veterinary services laboratory. Other species may be subject to this requirement as determined by the state veterinarian.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-09. Fencing requirements.

1. Owners of all categories of nontraditional livestock must comply with fencing or enclosure standards that will assure containment.
2. Unless otherwise specified, perimeter fences for cervids, nondomestic sheep and goats, and nondomestic hybrid sheep and goats must follow the height requirements in this section. The bottom of the fence must be at or below ground level. The fence must be a mesh of a size to prevent escape and not spaced more than six inches apart.
 - a. Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.
 - b. All gates in the perimeter fence must be locked and there must not be more than six inches below or between gates.
 - c. Posts must be of sufficient strength to keep nontraditional livestock securely contained. The posts must extend to the upper limits of the height requirement and be spaced no more than twenty-four feet apart.
 - d. Each fawning or lambing pen must not exceed one hundred sixty acres.
 - e. The minimum standards for perimeter fences are as follows:
 - (1) A four-foot fence for small cervid species, including muntjac.
 - (2) A six-foot fence for fallow deer.
 - (3) An eight-foot fence for white-tailed deer, mule deer, red deer, nondomestic sheep and hybrids, and nondomestic goats and hybrids.
3. Animals may be subject to additional fencing requirements at the discretion of the state veterinarian.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-10. Housing and handling facility requirements.

1. A license or permit may not be granted by the board until it is satisfied that the provisions for housing and caring for such nontraditional livestock and for protecting the public are proper and adequate and in accordance with the standards established by the board.

2. The board may examine all lands and buildings licensed as game bird and animal farms, deer farms, or fur farms to determine whether all nontraditional livestock held on licensed farms are treated in a humane manner and confined under sanitary conditions with proper and adequate housing, care, and food.
3. All category 2 or category 3 nontraditional livestock operators must have holding and handling facilities that enable handling, marketing, and individual identification of all nontraditional livestock on the premises. A permanent or portable handling facility must be accessible to the nontraditional livestock farm at all times.
4. All category 2 and category 3 nontraditional livestock premises must have an approved quarantine facility within its exterior boundary or submit an action plan to the board that guarantees access to an approved quarantine facility within the state.
 - a. The quarantine area must provide for proper isolation, separate feed and water, escape security, and allowance for the humane holding and care of its occupants for extended periods of time.
 - b. Should quarantine become necessary, the nontraditional livestock owner must provide an onsite quarantine facility or make arrangements at the owner's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-11. Escaped nontraditional livestock.

1. All category 2 or category 3 escapes must be reported to the board within one working day of discovery.
2. An owner of category 2 or category 3 livestock must notify the board within one working day of the capture or death of an escaped category 2 or category 3 animal.
3. An owner of category 2 or category 3 livestock must recapture or destroy the escaped category 2 or category 3 animal within four days except where public safety or the health of the domestic or wild population is at risk, in which case the animal may be disposed of immediately. An extension may be granted at the discretion of the state veterinarian.
4. The board may authorize an agent to seize, capture, or destroy category 2 or category 3 nontraditional livestock that have escaped their possessor's control. A fee will be assessed to seize, capture,

or destroy the animal, and the producer must reimburse costs not to exceed fifty dollars per animal to the responding agent.

5. The board or its designated agent may inspect any recaptured animal before it is commingled with other animals.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-12. Identification requirements.

1. Category 2 and category 3 nontraditional livestock maintained within North Dakota or transferred to any nontraditional livestock premises within the state of North Dakota must be identified as prescribed by the board.
2. All category 2 or category 3 hooped nontraditional livestock not distinguishable from wild species must be individually identified with a visual tag approved by the board and must be marked within twelve months of birth, or prior to removal of the animal from the nontraditional livestock premises.
3. An owner of category 2 or category 3 livestock must record the number and other information as specified and approved by the board.
4. Tags or identification numbers may be requested from an agent of the board during business hours. An owner of category 2 or category 3 livestock must record the identification number and sex of the animals marked. A board representative may make available the tags or identification to the nontraditional livestock operator.
5. Change of animal identification must be reported on the annual inventory report.
6. Identification assigned to an individual nontraditional livestock animal may not be transferred to any other animal.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-13. Waivers and exemptions. The board may waive any rule that constitutes an undue hardship to an individual. An individual wishing to receive a waiver of any rule must apply to the board stating specifically why there is a compelling need to have a rule waived and showing that the grant of waiver will not threaten or adversely affect any domestic or wild animal.

Exemptions of the rules pertaining to nontraditional livestock may be allowed by the board for purposes of preservation, viewing, and education, including research.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-14. Zoos. Zoos, research facilities, and education facilities must comply with requirements established for nontraditional livestock. Exemptions to specific testing may be allowed by the state veterinarian for endangered or highly valuable animals in instances where risk of death due to drug immobilization or physical restraint outweighs the likelihood that the animal harbors the disease in question. This applies to licensed zoos and class B brokers, as defined by the United States department of agriculture, dealing with another licensed zoo.

Zoos accredited by the American zoo and aquarium association importing exotic animals should work directly with the state veterinarian's office and are not required to appear before the board of animal health. The state veterinarian shall determine any testing needed, utilizing information from other veterinarians if warranted. Zoos must conduct testing that is deemed appropriate by the state veterinarian.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01.1-15. Auction sales.

1. Sales of category 2 and category 3 nontraditional livestock conducted through a process in which they are held out for sale to the public, through auction, bidding, or otherwise published or announced for sale, require a nontraditional livestock auction permit and veterinary inspection of animals.
2. The application for an auction permit must be submitted to the board at least thirty days prior to the date of auction. Once issued, the permit is valid for that event only.
3. Immediately prior to the beginning of the auction of a nontraditional livestock animal, information concerning requirements for nontraditional livestock license, disease testing, and certificates of veterinary inspection, must be provided by sales management to potential buyers.
4. Purchasers of category 3 animals must have a current nontraditional livestock license for that species in place prior to taking possession of category 3 animals. All potential buyers and sellers must register at the auction and provide their nontraditional livestock license numbers, if applicable. A ten-day grace period, in which to apply for a license,

may be granted to purchasers of category 2 animals provided adequate facilities are available to house the animals. All nontraditional livestock are subject to all other regulations while in the state.

5. Applicable federal requirements must be met.
6. The nontraditional livestock auction permitholder must ensure that an attending veterinarian licensed in North Dakota and accredited is available during the permitted nontraditional livestock auction sale. The attending veterinarian must inspect the animals prior to sale on the day of sale. Nontraditional livestock unfit for sale, as determined by the veterinarian, shall not be accepted for sale or trade.
7. Auction sale operators must submit records on all animals consigned for the auction to the board as specified in the auction permit within ten days of the date of the auction.
8. Facilities and records may be inspected by the board or its agent during standard working hours. Records kept in accordance with the federal Animal Welfare Act are sufficient if applicable to the species involved. Inspections made by the United States department of agriculture inspectors may be substituted for state inspection.
9. Events that do not meet the above criteria and when the exchange of nontraditional livestock licensed animals is limited to private treaty sales are exempt from these requirements.
10. Private sales or exchanges on the auction grounds on the dates of auction are prohibited.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

**CHAPTER 48-12-02
PRIMATES, WOLVES, AND WOLF HYBRIDS**

[Repealed effective January 1, 2007]

CHAPTER 48-12-02.1
CATEGORY 3 SPECIES

Section

48-12-02.1-01

Housing, Handling, and Health Requirements

48-12-02.1-01. Housing, handling, and health requirements.

1. All wild species of the family suidae (hogs and pigs) except swine considered domestic in North Dakota by the board of animal health.
 - a. Housing requirements (perimeter fence aboveground) and confinement or holding area:
 - (1) A perimeter fence at least six feet tall must be present.
 - (2) Twelve-gauge or stronger mesh is required and must be no greater than three inches by four inches.
 - (3) Four inch diameter treated posts or two inch steel pipe must be no more than eight feet apart. Posts must be set three feet deep.
 - (4) Fence must be attached on the inside.
 - (5) Two electric wires must be six inches inside the fence.
 - (a) The first wire must be six to eight inches above the ground.
 - (b) The second wire must be eight to twelve inches above the first wire.
 - (c) Generator backup is required.
 - (d) Snow that could affect the integrity of the fence must be removed before animals are allowed into the enclosure.
 - (e) An electric fence must be maintained in working order and be kept clear of foliage and debris.
 - (6) If a wooden structure is used, posts must be no more than eight feet apart with a gap no more than four inches between planks, except that if young pigs are present, the fencing gaps must be no more than two inches.
 - (7) In the confinement area, an underground fence must be constructed with concrete or imperviable surface comparable to concrete that meets the following requirements:

- (a) Same strength as perimeter fence.
 - (b) Buried two feet below ground.
 - (c) Three feet angled forty-five degrees toward interior of enclosure.
 - (d) Four to six inches aboveground overlapped and attached to aboveground fence to monitor and ensure proper connection.
 - b. Gates in confinement area must meet the following requirements:
 - (1) A gate at least six feet tall must be present.
 - (2) Any gaps must be less than four inches between the gate and ground, except that if young pigs are present, the fencing gaps must be no more than two inches.
 - (3) An electric wire must span across the gate. The electric fence must be constructed of twelve-gauge wire and consist of a minimum of a two joules charge.
 - (4) An underground fence must span the gate opening and must anchor the gating to the ground with a two-inch steel pipe or equivalent.
 - c. Importation requirements for all wild species of the family suidae (hogs and pigs) except swine considered domestic in North Dakota by the board of animal health.
 - (1) A health certificate and import permit from the board.
 - (2) All suidae must have a negative pseudorabies serologic test approved by the state veterinarian within thirty days prior to entry into North Dakota.
 - (3) A negative brucellosis test within thirty days of importation.
2. Large felids and felid hybrids (mountain lion, jaguar, leopard, lion, tiger, and cheetah):
- a. All large felids that are in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.
 - b. Housing requirements for all large felids:

- (1) Large felids must be maintained in enclosures utilizing thick laminated safety glass, bars, or sturdy wire or in large outdoor exhibits employing barriers to separate animals and the public.
 - (2) A cage for a single animal must measure at least twenty feet wide by fifteen feet deep.
 - (3) Cages must be fifty percent larger per additional animal.
 - (4) All enclosures must have smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must measure at least eight feet by eight feet.
 - (5) All enclosures must be made of steel chain link fencing of at least twelve-gauge strength, or material of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, an underfencing must extend at least forty-two inches into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.
 - (6) A guard rail or natural barrier must be in place that is at least three feet in height, providing a minimum of a four-foot distance between the enclosure and people in areas where people other than the owner or handler have access to the enclosure.
 - (7) A perimeter fence at least eight feet high and at least four feet from the primary enclosure must be in place to keep animals and persons out of the enclosure and to act as a secondary security measure should an animal escape.
- c. Additional housing requirements for very large pantherids (lions and tigers):
- (1) Outdoor cages must have vertical walls at least sixteen feet high, or thirteen feet high with a minimum three-foot overhang, or be provided with tops at least ten feet high.
 - (2) The owner of these species must provide raised shelves or ledges for sleeping and resting and large logs for claw sharpening.
- d. Additional housing requirements for cheetahs:
- (1) All cages must have vertical walls at least eight feet high.

e. Additional housing requirements for other large felids (leopards, jaguars, and mountain lions (pumas or cougars)):

(1) These species should be furnished with elevated ledges or perches for sleeping and resting and be provided wood logs or other such materials.

(2) All enclosures housing leopards and jaguars, whether indoors or outdoors must have secure tops.

(3) An outdoor cage housing mountain lions must be at least eight feet high with an additional overhang of fencing angling into the pen at least three feet or six feet high with a ceiling.

f. Importation for all large felids requires a health certificate and import permit from the board.

3. Bears.

a. All bears, which are in the presence of persons other than the owner, handler, or immediate family, must be under the direct control and supervision of the owner or handler at all times.

b. Housing requirements for all bears:

(1) Bears may be maintained in outdoor enclosures employing barriers, thick laminated safety glass, or bars. When used, dry moats must be at least twelve feet wide and twelve feet deep.

(2) Enclosures must include a dry resting and social area, pool, and den.

(3) The use of electric wires is recommended to discourage fence climbing. The climbing ability of certain bear species must not be underestimated.

(4) In addition to the primary enclosure:

(a) Den space for a single bear must measure at least six feet in width and depth and be at least five feet in height.

(b) Visual barriers such as logs or boulders should be added to enclosures housing more than one animal.

(c) There must be adequate shade provided to simultaneously accommodate all individuals housed within the enclosure.

(d) All enclosures must have smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must be at least eight feet by eight feet.

(5) Fences for all species must be fastened to a cement floor, or if a dirt floor is used, underfencing with a strength equal to the primary fencing must extend at least forty-two inches into the pen.

(6) The underfencing must be covered with a minimum of two feet of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

c. Additional housing requirements for polar bears, brown bears, and grizzly bears:

(1) If vertical walls are used as a primary barrier, they must be at least twelve feet high.

(2) All enclosures must have adjoining facilities to permit safe cleaning and additional separation.

(3) The dry resting and social area for one or two adult bears must measure at least four hundred square feet with an additional forty square feet provided for each additional bear.

(4) Fencing must be a minimum of four-gauge steel chain link or equivalent.

d. Additional housing requirements for American black bears, Asiatic black bears, sloth bears, spectacled bear, and sun bears:

(1) Three hundred square feet of dry resting and social space must be provided for one or two animals and be increased by fifty percent for each additional animal.

(2) Fencing must be minimum of nine-gauge steel chain link or equivalent.

(3) Fencing height must be a minimum of ten feet with a top or twelve feet with an additional three-foot overhang.

e. Importation requirements for all bears are a health certificate and import permit from the board.

4. Wolves and wolf-hybrids.

a. Any wolf or wolf-hybrid that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Outdoor housing or holding facility requirements for wolves and wolf-hybrids:

(1) Minimum floor space per animal must be two hundred square feet and floor space must be increased by one hundred square feet for each additional animal. The enclosure must be at least eight feet high with an additional overhang of fencing angling into the pen or six feet high with a ceiling.

(2) The enclosure must be made of steel chain link fencing of at least twelve-gauge strength, or fencing of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, underfencing must extend at least forty-two inches into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(3) Gates must have locks to prevent unauthorized entry of individuals.

(4) Shade and shelter from elements and inclement weather must be provided.

(5) A perimeter fence meeting the requirements of title 9, Code of Federal Regulations, sections 3.75, 3.77, and 3.78, must be required if the animal is kept within the city limits or other populated areas as determined by the state veterinarian.

c. Importation requirements for wolves and wolf-hybrids:

(1) A health certificate and import permit from the board.

(2) A statement on the health certificate that the animal has not been exposed to rabies.

(3) The animal cannot be imported from an area that is quarantined for rabies, unless approved by the state veterinarian.

5. Venomous reptiles.

a. A license to possess a venomous reptile will only be issued if the applicant seeking the nontraditional livestock license demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and if necessary dispose of the reptile. An

educational purpose includes research and displays at schools, institutions of higher education, wildlife preserves, zoos, and other bona fide educational displays approved by the state veterinarian.

- b. The permittee must provide documentation to the state veterinarian of the permittee's experience with these types of animals and the permittee's ability to safely maintain and control the animals.
- c. Premises where venomous reptiles are kept on display to the public must be posted with a notice clearly and conspicuously posted to provide the location of the nearest, most readily available source of appropriate antivenin and a written plan of action in the event of a venomous reptile bite. This plan of action must receive the written approval of a local medical facility, and a copy of the plan of action and the approval of the medical facility must be provided to the board. The person possessing the venomous reptile must arrange for appropriate antivenin to be readily available through a local hospital, the name, address, and telephone number of which must be affixed to the enclosure.
- d. Written animal escape emergency procedures must be clearly and conspicuously posted in the building housing these snakes and must be supplied to the board at the time the permit application is initially submitted.
- e. Written notice of the presence on the premises of venomous reptiles must be provided to the local police, firefighters, and emergency medical personnel, including an identification of the animals possessed and the location of the animals within the premises.
- f. If a venomous reptile is transported or removed from its primary enclosure for feeding or in order to clean the enclosure, the reptile must be kept in a fully enclosed container with a secure and locked lid which has air holes or other means of ventilation.
- g. Snake hooks must be present for caring for venomous snakes.
- h. The permittee must telephonically notify the board of any reptile bite on humans or escapes of any reptiles within twenty-four hours and provide a written report of the incident to the board within seven days.
- i. Housing requirements for venomous reptiles:
 - (1) An enclosure or container containing venomous reptiles must be clearly labeled as "Venomous" and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) All venomous reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All enclosures and access to them must be locked.

j. Importation for venomous reptiles requires a health certificate and import permit from the board.

6. Primates:

a. Any primate which is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. General housing requirements for primates:

(1) All primate housing must comply with title 9, Code of Federal Regulations, section 3.75.

(2) Primates must have a dedicated area, such as a room or cage-type enclosure, separate from other living areas of human occupants. Such an area will be considered a primary enclosure.

c. Space requirements for primates:

(1) Indoor primate enclosures must be at least two square feet per pound of adult body weight per animal. This figure must be increased by fifty percent for each additional animal. The height of the primate enclosure must be at least four times taller than the animal's body length.

(2) Primates kept outdoors must have a dedicated enclosure, which must include a roof, shelter from the elements, fence, and a lock on the enclosure. The dimensions of the outdoor enclosure must be at least as large as required for the indoor enclosure. There must also be a perimeter fence.

d. Importation for primates requires a health certificate signed by a licensed and accredited veterinarian and an importation permit issued by the board containing the following:

(1) Negative tuberculosis test within thirty days of importation into the state, with mammalian tuberculin used in testing.

(2) Negative hepatitis A test.

(3) Fecal sample tested negative for parasites, shigella, and salmonella.

(4) Statement that a primate has not shown signs of or been exposed to infectious disease in the last one hundred eighty days.

e. Requirements for maintaining a primate after importation:

(1) Negative tuberculosis test prior to renewal of license.

(2) Negative tuberculosis test within thirty days of change of ownership.

7. Nondomestic sheep and hybrids and nondomestic goats and hybrids:

a. Fencing requirements for nondomestic sheep and hybrids and nondomestic goats and hybrids:

(1) Fencing must be at least eight feet high and made of twelve-gauge or heavier woven wire, or other material of similar strength.

(2) The bottom of the fence must be at or below ground level.

(3) All gates in the perimeter fence must be locked and there must not be more than six inches below or between gates.

(4) A handling and holding facility, adequate to handle wild sheep or goats, or both, must be in place.

b. Import requirements for nondomestic sheep and hybrids and nondomestic goats and hybrids in addition to those listed in section 48-12-01-04:

(1) A health certificate and import permit from the board.

(2) Official identification approved by the state veterinarian.

(3) Negative tuberculosis test within thirty days.

(4) Negative test for Brucella ovis by an official test approved by the state veterinarian within thirty days.

(5) Negative test for Brucella abortus by two different official tests approved by the state veterinarian within thirty days.

- (6) Animals must be free of any signs of infectious footrot by an accredited veterinarian and a statement to that effect must be listed on the health certificate.
- (7) Animals must be free of any signs of scrapie by an accredited veterinarian. A statement signed by the consignor must state that there had not been a case of scrapie in the flock of origin in the last five years.
- (8) Special permission must be obtained from the board to possess nondomestic sheep and hybrids and nondomestic goats and hybrids south and west of the Missouri River.

History: Effective January 1, 2007.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

TITLE 89
STATE WATER COMMISSION

CHAPTER 89-11-01

89-11-01-05. Noneligible items. The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. A rehabilitation of an existing well.
2. A water supply project on federal or state land.
3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. A water supply project started without prior approval of the state engineer.
5. The construction of stock dams or dugouts dependent upon runoff.
6. Projects that require repair as a result of failure to provide maintenance to an existing water source.
7. ~~Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups or easements.~~

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; July 21, 2006.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-06. Application procedure.

1. Requests for assistance must be on a form provided by the state water commission and must include:
 - a. Written proof the applicant applied for cost-share assistance from the farm service agency formerly known as the agricultural

stabilization conservation service and was denied such assistance including the reason for the denial.

- b. An area map indicating the location of the proposed water supply project.
 - c. ~~A written~~ An estimate of the costs of the proposed water supply project.
 - d. Verification by the applicant that the applicant is a livestock producer.
2. The state engineer shall review applications and approve or deny them. The state engineer shall, within the limits of available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:
- a. Complete the project within ~~sixty~~ one hundred eighty days of receiving notification of approval of funding of the water supply project.
 - b. Provide receipt of actual expenditures or an affidavit of work completed if work is done by the applicant, or both, if applicable.
 - c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the applicant or applicant's agents or employees under this agreement.
3. Application forms may be obtained by contacting:

North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701) 328-2750

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02